Q. Do you know who she meant by 'they'?

A. I believe she said 'we', meaning the speakers, like Mr. Hall.

Q. Do you remember her saying anything else?

A. Well, she said that the government could submit any evidence they liked at any time, and that they could also use books that might not have any bearing on the case.

Q. Is that the best of your recollection of what she said?

A. Well, she gave various examples of things, that I don't recall, that were going on, in what she called the horrifying, shocking trial.

Q. Did she use those words?

A. Yes.

Q. Horrifying and shocking?

A. Horrifying and shocking." (R. 184-185.)

Hall (Regional Director for ILWU, defendant in *Fujimoto* case). (O.B. 13.)

Additional and more complete excerpts from Mr. Hall's testimony.

"The Witness: . . . The second thing is the paragraph reading as follows: 'Mrs. Sawyer, speaking for a half hour, spoke of "some rather shocking and horrible things that go on at the trial" '. I made that statement, and I was referring to the fact that the judge was overruling a number of defense objections and permitting evidence of a hearsay nature that I had no prior knowledge of, and things of that nature." (R. 395.)

. . . . .

"Q. Did she talk about the testimony of Paul Crouch?

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1958

No. 326

In the Matter of Disciplinary Proceedings against
HARRIET BOUSLOG SAWYER,
a Member of the Territorial Bar of the Territory of Hawaii,
Petitioner.

BRIEF OF RESPONDENT.

A. WILLIAM BARLOW,
Attorney for the Bar Association of Hawaii,
410 Gasco Building, Honolulu, Hawaii,
MORIO OMORI,
Special Deputy Attorney General,
Territory of Hawaii,
Iolani Palace Grounds, Honolulu, Hawaii,
Attorneys for Respondent.

A. Yes, I think there was some reference to Mr. Crouch's testimony. He was galloping across the Steppes, something along that line, in a Red Army uniform. All that was supposed to be evidence against Jack Hall." (R. 404.)

. . . . .

"Q. Did she speak of the conflicting testimony of the same witness in the Smith Act trial and in previous hearings?

A. Yes, I think so." (R. 405.)

. . . . .

"Q. Did she say anything to the effect, and I am quoting, 'On cross-examination Johnson said he did not tell the names of the books but just showed Jack Hall the duffel bag. So Jack Hall violated the Smith Act because he saw a duffel bag with some books on overthrowing the government in it. It's silly. Why does the government use your money and mine to put people in jail for thoughts?' Did she say anything like that?

A. Something like that. I don't remember putting Jack Hall in jail for thoughts, but there was something about duffel bag evidence." (R. 406.)

Petitioner: (O.B. 14-15.)

Additional and more complete excerpts from petitioner's testimony:

"A. I recall telling four factual things that had happened in the Smith Act trial up to that point.

Q. In other words, you related Crouch's testimony in your——

A. I summarized Mr. Crouch's testimony.

Q. You summarized Mr. Crouch's testimony?

A. Extremely briefly.

Q. In order to show the people present what kind of testimony was going on at the trial?

A. Yes.

Q. And you summarized Johnson's testimony with the same view?

A. Yes."

. . . . .

"Q. Did you make this statement: 'Mr. Johnson said he did not tell the names of the books, but just showed Jack Hall the duffel bag; so Jack Hall violated the Smith Act because he saw a duffel bag with some books on overthrowing the government in it. It's silly. Why does the government use your money and mine to put people in jail for thoughts?'

A. I made no statement in those words or any words approximating that, Mr. Barlow.

Q. This doesn't reflect at all what your statement was on that occasion, is that right?

A. It sounds to me like Mr. Matsuoka—I did make a statement concerning Mr. Johnson showing Mr. Hall a duffel bag containing books and I explained on the basis of Mr. Hall's having seen the duffel bag, the books contained in the duffel bag had been admitted into evidence.

Q. You criticized that admission?

A. I did not criticize it. I merely stated the fact that it had been—that that had happened." (R. 454-455.)

"The Witness. Those are not my words. The substance, the fact that I was in the Majors-Palakiko case—that in that case the Supreme Court of the Territory had refused to permit Mrs. Hughes' testimony; that Vernon Stevens had told

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Appendix.

The Chairman. You don't feel at this time that you can deny that you said it? You say you have no recollection. And that's the same testimony you gave before. But some of the Committee felt that you had not absolutely denied that you said it.

The Witness. Well, this is—I would like to say this to the Committee. I have absolutely now no independent recollection of what I said at Honokaa. I feel that the things—I tried to the very best of my ability, as an officer of the Court, to tell Judge Wiig everything I had said in context and to explain to him. For me to say now, two years later, something I didn't say to Judge Wiig, I really can't do it honestly. So I feel that what I intended to say to Judge Wiig at the time was—here is what I said—and I didn't say the things that this newspaper reporter attributed to me in the way that they were said. But I don't want now to say to this Committee something I did not say to Judge Wiig two years ago—or more than two years ago—because I have no present recollection.

Mr. Anthony. Mr. Chairman, we agree that the witness [Bouslog] will not deny having made the statement now as a result of this colloquy." (R. 527-528.)

Much of the selected excerpts of the testimony presented by petitioner in the opening brief, her attempted explanation of the speech to Judge Wiig, and the reconstruction of petitioner's speech by her counsel in the opening brief seem designed to engender the main theory of her case that she was explaining the Smith Act in general terms and laymen's

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here in Honolulu. Now, let's not fool ourselves about that. We're lawyers here." (R. 525-526.)

The Genesis of the Charges.

Petitioner implies some collusion in the amendment of the Supreme Court rules which she maintains the bar association "devised" to permit the bar association to file such complaints, after the attorney general took no action. (O.B. 18.) This charge is ridiculous. Rules of the Supreme Court are revised periodically and only under the authority of the Court, not the bar association. Petitioner compliments herself too much in stating that the amendment of the rules which are applicable to all members of the bar was "devised" for her own and personal detriment.

Petitioner's Professional Record.

Respondent merely points out that many members of the Bar Association of Hawaii, the complainant, have nobly observed their lawyer's creed and have fought for the so-called "little people" and the "working people" and the "non-haoles" in the Hawaiian community. Petitioner has served at focal points of social and economic conflict in her community. So have many of the other members of the bar. But this is beside the point. No finger is being pointed at petitioner because she has contributed to "government at law" by challenging the status quo and by representing the "little people" and "victims of public passion and prejudice." (O.B. 23.) She is being proceeded against for what the Ethics Committee and the two courts below have found to be gross miscon-

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tution, laws or treaties of the United States. The right to practice law in the courts of the Territory of Hawaii is not such a right or privilege. As discussed in Point III B, *infra,* no freedom of speech rights was involved.

No rights of due process were infringed. As to disbarment, due process requires only that an attorney have reasonable notice of the charges against him and a reasonable opportunity to be heard in his defense. The record is replete with the care and consideration used at every turn by the disciplining court to accord petitioner with every opportunity to present her case. In fact, no allegation to the contrary is made. Petitioner was represented by eminent counsel from the outset, apprised of all charges against her, given a protracted hearing with free and full exercise of her rights of confrontation, presentation of testimony, examination and cross-examination of witnesses, and accorded an opportunity for a *de novo* hearing and much leeway to present her defense and to file motions and demands of various forms in time and number. As discussed in Point III A, *infra,* no due process rights were violated.

2. The power to discipline for misconduct of an attorney is incidental to the local licensing authority. The judgment herein suspended petitioner from practice in the territorial courts only and created a standard of conduct that affects her license to practice in the territorial courts only. It does not interfere with the administration of justice in the federal courts. The territorial court, as the jurisdiction primarily respon-

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OCTOBER TERM, 1958

No. 326

In the Matter of Disciplinary Proceedings against
HARRIET BOUSLOG SAWYER,
a Member of the Territorial Bar of the Territory of Hawaii,
Petitioner.

BRIEF OF RESPONDENT.

STATEMENT OF THE CASE.

The Judgment and Its Effect.

Under Rule 15(d) of the Rules of the Supreme Court of the Territory of Hawaii (O.B. 84, App.), it is true that an attorney suspended for more than six months must apply for admission and satisfy the court as to good moral character and requisite legal learning. (O.B. 2, n. 2.) But a suspension for more than six months does not carry with it the gravity of a disbarment in that the reapplication after such sus-

pension would be as a matter of right after the expiration of the period of suspension. The same cannot be said for a disbarment.

The Proceeding in the Territorial Court.

A more detailed, chronological account of the proceedings than that presented by petitioner in this section (O.B. 6) is presented *infra* in Point I, B, 2 at p. 30.

The Evidence and the Findings—the Honokaa Speech.

Petitioner, in her version of the statement of the evidence, attempts to summarize the notes of the news reporter Matsuoka and embellishes the summary with pointed references to what petitioner, in retrospect, insists she was talking about. Thereafter, she recites incomplete portions of the testimony of witnesses at the hearing (O.B. 10-14) and then interprets her own statements and testimony into a total framework of innocence. (O.B. 14-16.)

The reporter Matsuoka's notes are set out *in haec verba* (R. 593-595) and require no summarization. They speak for themselves. Moreover, a fair statement of the case, it is respectfully submitted, cannot, in all good conscience, be presented without a consideration of all the testimony and evidence taken in toto to form a complete picture. It cannot be done by overemphasizing petitioner's self-serving attempt to explain away her speech in an equivocal manner, and, in the words of petitioner, in "an excess of Lawyer's caution." (R. 438.) It cannot be done by taking

arbitrariness in the findings below as to offend due process.

There is no violation of petitioner's freedom of speech rights. Membership in the bar is a privilege burdened with conditions. The restraints imposed did not overreach the bounds of protected speech. The clear and present danger test has no application. It may be a formulary and a frame of reference. But to follow it studiously and stolidly would be to emasculate the canons of ethics and the reasonable common law rules of behavior of attorneys. Contempt for the reasonable rules and canons of behavior cannot be equated with courage and insults to the integrity of the judge and judicial processes cannot be equated with independence.

The findings on the Fuller affidavit are supported by the evidence and by applicable law. Petitioner's affidavit, together with testimony of her own witnesses, establishes beyond question that petitioner's conduct merits stern censure. Her searching and pointed interrogation of a juror who was obviously in poor physical and mental state and filing an affidavit without disclosing all of the circumstances amounted to gross misconduct. This was not an interrogation to inquire into the mental imbalance of the juror during the trial and before verdict.

isolated excerpts from Matsuoka's notes and incomplete excerpts from witnesses' testimony.

It is uncontroverted, as stated in the opening brief, that petitioner made the speech while counsel for certain respondents in the *Fujimoto* case then at trial before Judge Jon Wiig, United States District Court Judge for the District of Hawaii, which is the gravamen of the first charge in the complaint. (O.B. 7.) It is also uncontroverted that the meeting at which the speech was made by petitioner was held under the auspices of a defense committee of the ILWU (R. 410) which had been set up to raise money to aid the defense of Jack Hall, one of the defendants in the *Fujimoto* case, and any other union member in similar prosecutions. (R. 401-402.)

The reporter Matsuoka's notes need no explanation in the statement of the case. The colloquy between Judge Wiig and petitioner is also reproduced in full (R. 22-23) and need not have been re-explained and interpreted by counsel for petitioner. (O.B. 15-16.)

The following are additions to petitioner's selected excerpts of the testimony and are necessary to present all of the pertinent facts which should, in all fairness, be brought to the attention of this Court.

Matsuoka (newspaper reporter, Hilo Tribune Herald). (O.B. 10.)

The portion of Mr. Matsuoka's testimony quoted by petitioner contains some ellipses denoting a deletion. The question asked and the words deleted by petitioner at the beginning of the quotation are:

"Q. Be more specific, as to what trial you are referring to.

A. The Smith Act trial, that was under way in Honolulu."

(Then follows what is quoted by petitioner.) (R. 150-151.)

John D. Morse (Industrial Relations Director, Honokaa Sugar Company). (O.B. 11.)

The following pertinent portion of Mr. Morse's testimony should not have been excluded from the quotations on page 11 of the opening brief:

"Q. Search your memory, Mr. Morse, and try to tell the Committee everything that Mrs. Bouslog said.

A. Well, she referred quite often to the trial in Honolulu, and about the difference—about the evidence that was brought up against the seven persons who are on trial, and how trying it was, that it had been going on for days, and that is about all I can recall." (R. 166.)

And further, Mr. Morse's testimony referred to the names of the same persons whose names were being mentioned in the *Fujimoto* case then at trial:

"Q. Did she mention a person by the name of Henry Johnson?

A. She did.

Q. Did she mention a person by the name of Jack Hall?

A. She did.

Q. Did she mention a person by the name of Paul Crouch?

A. I don't recall." (R. 167.)

and costs." June 25, 1948, c. 648, 62 Stat. 929, 28 U.S.C., sec. 1293.

A. The jurisdictional element of a controversy involving $5,000 in value, exclusive of interest and costs, was not met in the case at bar.

The pecuniary limitation on the jurisdiction of the federal courts is rigidly observed and cannot be waived.

Ever since the Judiciary Act of 1789, the necessity of establishing the jurisdictional amount has been scrupulously observed by the courts. The leading case of *Barry v. Mercein,* 46 U.S. (5 How.) 103 (1846), involved a petition for writ of habeas corpus whereby petitioner sought control of his daughter then in the custody of his estranged wife. The Act of 1789, 1 Stat. 84, c. 20, sec. 22, permitted the Supreme Court to review final judgments of the circuit courts when the matter in dispute exceeded $2,000. Chief Justice Taney pointed out that the Supreme Court had only such appellate jurisdiction as was conferred upon it by act of Congress. Construing the act, he held that

> "The words of the Act of Congress are plain and unambiguous. They give the right of revision in those cases only where the rights of property are concerned, and where the matter in dispute has a known and certain value, which can be proved and calculated, in the ordinary mode of a business transaction. There are no words in the law which, by any just interpretation, can be held to extend the appellate jurisdiction beyond these limits, and authorize us to take cognizance of cases to which no test of money value can be applied." *Id.* at 120.

Olival (Women's Editor, Hilo Tribune Herald). (O.B. 12.)

Petitioner's selection of excerpts from Mrs. Thelma Olival's testimony stops short immediately before the following colloquy:

"Q. Now what trial was she referring to?

A. To the Jack Hall trial.

Q. Do you know where that trial was being held?

A. In Honolulu here.

Q. There is no doubt in your mind that she was referring to that trial?

A. Oh, yes, she was referring to it." (R. 172.)

Ramos (Clerk, Honokaa Sugar Company). (O.B. 12.)

Additional excerpts:

"A. Well, it was a general speech. She had no notes. She just came out and spoke, and I recall her saying that there was no fair trial in the Smith Act case." (R. 178-179.)

Phyllis P. Morse (wife of John D. Morse). (O.B. 13.)

Complete pertinent excerpts of Mrs. Morse's testimony left out from petitioner's statement of the evidence:

"A. I believe that she said that there was no such thing as a fair trial under the present Smith Act case in Honolulu, and that the newspapers were not giving a full account, a true account, and that from time to time they and we would be coming to the various islands to acquaint a group with the true facts.

In *Perreine v. Slack,* 164 U.S. 452 (1896), this Court held that a controversy between the mother and the testamentary guardian of infant children, each claiming the right to have custody and care, was a matter of "such a nature as to be incapable of being reduced to any pecuniary standard of value." *Id.* at 454.

In *Simms v. Simms,* 175 U.S. 162 (1899), this Court again held that it could not review an appeal from a divorce decree of the Supreme Court of the Territory of Arizona since the matter was not one of value which could be estimated in money.[2]

Upon the foregoing authorities, it is respectfully submitted that the petitioner did not and could not meet the jurisdictional requisite of a case involving a matter the value of which was capable of being reduced to any pecuniary standard of value.

Petitioner, by her affidavit, sought to establish that the value of her share in the law partnership of Bouslog and Symonds exceeds the sum of $5,000 exclusive of interests and costs and that her annual net income has always exceeded said sum. (R. 622.) However, neither the value of the law partnership nor her annual income is the matter in dispute; the privilege of appellant to hold a license and continue in the prac-

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[2]Accord: *In re Red Cross Line,* 277 Fed. 853 (S.D. N.Y. 1921). (Action for specific performance of arbitration does not draw jurisdictional amount from claim to be arbitrated. Amount involved nominal.) *Carroll v. Somervell,* 116 F.2d 918 (2 Cir. 1941). (Matters not susceptible of pecuniary valuation arising out of alleged wrongful discharge.)

B. The jurisdictional element of a case involving the Constitution, laws or treaties of the United States or any authority exercised thereunder was not met in the case at bar.

1. The right to practice law in the courts of the Territory of Hawaii is not a right or privilege protected by the Constitution, laws or treaties of the United States.

The jurisdictional requirement that an appeal from a final decision of the Supreme Court of Hawaii be from a case involving the Constitution, laws or treaties of the United States in 28 U.S.C., sec. 1293, does not differ from the similar jurisdictional requirement of 28 U.S.C., sec. 1257(3) where an appeal from a state court to the Supreme Court of the United States is concerned. *Iglesias Costas v. Secretary of Finance,* 220 F.2d 651, 653 (1. Cir. 1955).

The right of appeal herein, therefore, must be predicated upon a denial of a title, right, privilege or immunity of a nature protected by the Constitution, laws or treaties of the United States.

At the outset, it should be made clear that the Hawaiian Organic Act should not be considered a federal statute for purposes of jurisdiction. See *Puerto Rico v. Rubert Co.,* 309 U.S. 543, 550 (1940); *American Security v. District of Columbia,* 224 U.S. 491 (1912); *Arroyo v. Puerto Rico Transportation Authority,* 164 F.2d 748 (1 Cir. 1947). In *Alesna v. Rice,* 172 F.2d 176 (9 Cir. 1949), the court held that the Hawaiian Organic Act (48 U.S.C. secs. 642, 645) places the courts of Hawaii in the same position in relation to the federal judicial system as state courts.

And where the Organic Act is concerned with local policy, it is a local law over which federal courts

her that he had beaten Palakiko was not permitted by the Supreme Court; whereas in the Smith Act cases in general, as well as in this Smith Act case, people who had been many years away and had never seen this defendant were permitted to testify.

Mr. Barlow. In other words, would it be fair to say that you paralleled that with the phrase that Mr. Matsuoka attributes to you: 'With the same situation, a Federal judge, sitting on a Federal Bench, permits Crouch to testify about 27 years ago what was said then'?

The Witness. I used the Palakiko-Majors case as a contrast to Mr. Crouch's testimony and the hearsay testimony in the conspiracy case.

Q. That Judge Wiig was allowing the present Smith Act case, is that right?

A. The motions hadn't been argued yet.

Q. No, but that Judge Wiig was allowing in the present Smith Act case?

A. Yes, he was.

Q. That is what you were critical about? Is that right?

A. I was reporting. I left that to the audience.

Q. Were you reporting to your client or to whom?

A. By 'reporting', I meant relating.

Q. You were relating what was going on in the pending Smith Act case right?

A. I related what Mr. Crouch—the summary of Mr. Crouch's testimony, yes, Mr. Barlow.

Q. And you contrasted that with the Palakiko-Majors case?

A. I contrasted the use of hearsay testimony in the Majors-Palakiko case where life was involved, in contrast to the Smith Act case where

27-year-old testimony was being permitted." (R. 457-458.)

"Q. But you did say there was no such thing as a fair trial in the Smith Act case?

A. In the Smith Act case, yes." (R. 459.)

. . . . .

"The Chairman. We had one other question. I think we had quite a discussion the other day about an equivocal denial, and so forth, and some of the Committee, in discussing the matter, wanted to know whether or not the one statement that seems to be attributed now, at least, by Jack Hall to himself, but which is set forth in Exhibit 1—whether or not you did or you did not make the statement—and that is, according to this exhibit: 'She said she wanted to tell about some rather shocking and horrible things that go on in the trial.'

The Witness. I told Judge Wiig I have no recollection, and I have no present recollection of having made that. I reconstructed the entire speech and I told Judge Wiig everything I could remember that I said and that I had no recollection of ever having said.

The Chairman. But you wouldn't be able to absolutely deny that you said it? You have no recollection—and you had no recollection at that——

The Witness. Immediately afterwards I had absolutely no recollection although I recreated the whole speech, and Judge Wiig was asking me after I had told him everything I did say—certain things, and I have no recollection of making that at any time. It doesn't sound like my language.

should not take direct jurisdiction. *Puerto Rico v. Rubert Co., supra.* See also *National Bank v. County of Yankton*, 101 U.S. 129, 133 (1879); *Laguana v. Ansell*, 102 F.Supp. 919 (D. Guam 1952), aff'd per curiam, 212 F.2d 207 (9 Cir. 1954); *Guam v. Kaanehe*, 137 F.Supp. 189 (D. Guam 1956).

The petitioner consequently must show that her privilege to practice law is a privilege guaranteed by the Constitution, treaties or statutes of the United States which is protected by a federal court, before the court below can take jurisdiction.

It is an accepted rule that:

> "The privilege of practicing law is not a vested or a constitutional right. In re Cloud (Iowa) 250 N.W. 160, 163. It is a privilege burdened with the condition that the possessor of it remains a fit and safe person to exercise it. State v. Peck, 88 Conn. 447, 91 A. 274, 275, L.R.A. 1915A, 663. Ann. Cas. 1917B, 227; People ex rel Karlin v. Culkin, 248 N.Y. 465, 162 N.E. 487, 60 A.L.R. 851, 855. Proceedings for disbarment do not come within the due process clause (Amendment 14), or the provisions for a trial by jury (article 3, § 2, subd. 3; Amend. 6) of the Federal Constitution. Ex parte Wall, 107 U.S. 265, 288, 289, 2 S.Ct. 569, 27 L.Ed. 552, 561, 562; In re Cloud, supra." *In re Haddad*, 106 Vt. 222, 173 A. 103, 104 (1934).

The Supreme Court of Hawaii has also stated that:

> "A license to practice law does not confer upon the licensee a vested or absolute right but a privilege or franchise which may be terminated by the court granting it for malpractice, nonpayment of moneys collected by him for private parties, or

for any deceit, or other gross misconduct. (See R.L. 1935, § 3614)." *In re Henriques*, 34 Haw. 348, 351 (1937).

The right to practice law is also not a property right. *In re Thatcher*, 190 Fed. 969 (D. Ohio 1911); *Ayres v. Hadaway*, 303 Mich. 589, 6 N.W.2d 905 (1942); *Emmons v. Smitt*, 58 F.Supp. 869 (D. Mich. 1944).

It was also early held by this Court in *Bradwell v. The State*, 16 Wall. 130 (1873) that the right to practice law in a state court is not a privilege or immunity protected by the federal courts. In answer to the contention that the right to practice law was one of the rights which the state was prohibited from denying by the Federal Constitution, this Court stated:

"In this latter proposition we are not able to concur with counsel. We agree with him that there are privileges and immunities belonging to citizens of the United States, in that relation and character, and that it is these and these alone which a State is forbidden to abridge. But the right to admission to practice in the courts of a State is not one of them. This right in no sense depends on citizenship of the United States. It has not, as far as we know, ever been made in any State, or in any case, to depend on citizenship at all. Certainly many prominent and distinguished lawyers have been admitted to practice, both in the State and Federal courts, who were not citizens of the United States or of any State. But, on whatever basis this right may be placed, so far as it can have any relation to citizenship at all, it would seem that, as to the courts of a

language and was not referring to the Smith Act case at trial in Honolulu in which she was one of counsel. In this connection, it would seem that the forthright honesty and candid observation of Mr. J. Garner Anthony, an experienced attorney and then counsel for petitioner, deserve some notice in the statement of the evidence and findings of this case, to wit:

> "Q. (By Mr. Dodge, a member of the Ethics Committee.) I have a couple of other questions on this Honokaa thing. You stated, I think on Monday, that you did not criticize Judge Wiig's ruling as such in the speech that you made, but rather that you left that conclusion to the audience.
>
> A. [Mrs. Bouslog]. Yes.
>
> Q. And in view of that and in view of the audience you were talking to, was there any doubt in your mind as to what conclusions that audience would draw from your remark?
>
> . . . . .
>
> Mr. Peters (A member of the Ethics Committee). . . . He's asking Mrs. Bouslog whether or not the camouflage relative to generality was calculated to be applied specifically to Brother Wiig. That's all he is asking. Do I understand your question?
>
> Mr. Anthony. That is a question the Prosecutor ought to ask.
>
> The Chairman. I think the question is proper.
>
> Mr. Anthony. I will say to the Committee right now—I have read these speeches and I would agree with the conclusion implicit in Mr. Dodge's question; namely that this was a talk about what was going on in the Smith Act trial

duct in engaging and participating in a wilful oral attack upon the administration of justice, in impugning the integrity of a presiding judge in a pending case and in making "studied inquiries" and "searching or pointed examination" of a physically and mentally ill juror.

SUMMARY OF ARGUMENT.

1. The court below had no jurisdiction over the local disciplinary proceeding involved. The jurisdictional elements of the appellate review statute applicable to the territorial court were not met.

This cause does not involve a controversy involving $5,000 in value, exclusive of interest and costs. A lawyer's license to practice law is not a claim, cause of action, privilege or right that can be reduced to a pecuniary standard. It has no measure in money. The pecuniary limitation of the applicable jurisdictional statute is and should have been rigidly observed. It is true that such strict adherence smacks of arbitrariness, but a right can be priceless and have no measure in money. To rule otherwise would make a shambles of the jurisdictional statute.

This cause did not meet the jurisdictional element of a case involving the Constitution, laws or treaties of the United States or any authority exercised thereunder. The right of appeal to the United States Court of Appeals from the Supreme Court of the Territory of Hawaii must be predicated upon a denial of a title, right, privilege or immunity protected by the Consti-

sible for petitioner's conduct, applied its own standard of conduct and made its own determination after exhaustive hearings. It judged petitioner by standards of conduct applicable to members of its own bar. These local standards are applicable to actions in or out of court and in all courts, local, state, or federal. The court merely followed the recognized rule that if an attorney admitted to its bar commits acts in reference to federal court litigation which reflect on his fitness to enjoy the rights and privileges of an attorney in the local court, proceedings may be taken against him in the local court. It merely exercised its recognized autonomous control over the conduct of members of its bar.

3. The findings of the courts below are rationally supported by the evidence. The record below was made after a full and exhaustive hearing. Petitioner was represented by counsel below and had every opportunity to contradict, rebut, amplify, or otherwise attack the testimony and evidence adduced. But as the court below found of great significance, she did not produce a single member of the sympathetic and predominantly ILWU audience to confirm her version of the Honokaa speech. Her Fuller affidavit, on its face, supports the findings below. The testimony on the Fuller affidavit reaffirms said findings. The testimony and evidence cannot be glossed over by deft interweaving of her version of the testimony and evidence and by overly dissecting what actually was said into what she meant to say. It is for what she said and not what she meant to say that she is being disciplined. There is no

ARGUMENT.

I.

THE COURT BELOW HAD NO JURISDICTION OVER THE CASE AT BAR.

It is fundamental that the jurisdiction of a court, appellate or original, is always a preliminary question. See *Minnesota v. Hitchcock,* 185 U.S. 373 (1902); *Industrial Addition Association v. Commissioner of Internal Revenue,* 323 U.S. 310 (1945). Respondent has raised the question of jurisdiction of the court below and again challenges the assumption of jurisdiction by the court below.[1]

An appeal from the final decision of the Supreme Court of the Territory of Hawaii may be taken to the United States Court of Appeals for the Ninth Circuit only if the jurisdictional elements of 28 U.S.C., sec. 1293, are met. The statute conferring jurisdiction on the lower court to review final judgments of the Supreme Court of the Territory of Hawaii provides:

> "Final decision of Puerto Rico and Hawaii Supreme Courts. The courts of appeals for the First and Ninth Circuits shall have jurisdiction of appeals from all final decisions of the supreme courts of Puerto Rico and Hawaii, respectively in all cases involving the Constitution, laws or treaties of the United States or any authority exercised thereunder, in all habeas corpus proceedings, and in all other civil cases where the value in controversy exceeds $5,000, exclusive of interest

[1] Jurisdiction was first questioned in the court below on petitioner's motion for stay pending appeal. See per curiam opinion assuming jurisdiction, Lemmon, Circuit Judge, dissenting. (R. 623-628.)

The claim for custody was incapable of being reduced to any pecuniary standard and the writ of error was dismissed.

The court below reached the same result in *Sumi v. Young,* 83 F.2d 752 (9 Cir. 1936), aff'd. 300 U.S. 251 (1937), involving an appeal from the United States District Court of Alaska.

In *DeKrafft v. Barney,* 2 Black 704 (1862), a family dispute as to who should be guardian of a minor was held to be a right which could not be measured in money and the appeal dismissed accordingly for want of jurisdiction.

The same rule was applied in cases appealed from the highest court of a territory. *Potts v. Chumasero,* 2 Otto (92 U.S.) 358 (1875) involved an appeal from the Supreme Court of the Territory of Montana, challenging a change in the seat of government. In dismissing the appeal, the court stated that "the matter in dispute must be money or some right, the value of which in money can be calculated and ascertained." *Id.* at 361.

Again in *Youngstown Bank v. Hughes,* 106 U.S. 523 (1882), this Court held that it had no jurisdiction to review a suit to enjoin a county auditor from compelling the cashier to deliver the books of the bank, since the value of the matter in dispute was not ascertainable in money. It stated that "The present suit is not for money, nor for anything the value of which can be measured by money." *Id.* at 524.

tice of law is involved herein and nothing else. See *Abadie v. United States,* 149 U.S. 261 (1893). Such a privilege might be priceless, but has no measure in money. As stated in *Town of Elgin v. Marshall,* 106 U.S. 578 (1882):

> "The rule, it is true, is an arbitrary one, as it is based upon a fixed amount, representing pecuniary value, and, for that reason, excludes the jurisdiction of this court, in cases which involve rights that, because they are priceless, have no measure in money. Lee v. Lee, 8 Pet. 44; Barry v. etc. constructions." *Id.* at 580.

Mr. Justice Stone, in construing a substantially similar statute in *Healy v. Ratta,* 292 U.S. 263, 270 (1934), stated:

> "The policy of the statute calls for its strict construction . . . Due regard for the rightful independence of state governments which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined."

The "value in controversy" has reference "to the matter which is directly in dispute in the particular cause in which the judgment or decrees sought to be reviewed has been rendered . . ." *Town of Elgin v. Marshall, supra* at 570-80.

It is also well settled that the burden of proving jurisdictional amount is upon the petitioner. *De La Torre v. National City Bank,* 110 F.2d 381 (1 Cir. 1939); *Maldonado v. Savings and Loan Fund Ass'n,* 222 F.2d 78 (1 Cir. 1955).

State, it would relate to citizenship of the State, and as to Federal courts, it would relate to citizenship of the United States.

"The opinion just delivered in the *Slaughter-House Cases* renders elaborate argument in the present case unnecessary; for, unless we are wholly and radically mistaken in the principles on which those cases are decided, the right to control and regulate the granting of license to practice law in the courts of a State is one of those powers which are not transferred for its protection to the Federal government, and its exercise is in no manner governed or controlled by citizenship of the United States in the party seeking such license." *Id.* at 139.

In re Lockwood, 154 U.S. 116, 117 (1894) explains this proposition thusly:

"In *Bradwell v. The State*, 16 Wall. 130, it was held that the right to practise law in the state courts was not a privilege or immunity of a citizen of the United States; that the right to control and regulate the granting of license to practise law in the courts of a State is one of those powers that was not transferred for its protection to the Federal government, and its exercise is in no manner governed or controlled by citizenship of the United States in the party seeking such license."

It is fundamental that "No rights can be acquired under the Constitution or laws of the United States, except such as the government of the United States has the authority to grant or secure." *United States*

v. Cruikshank, 92 U.S. 542, 551 (1875); *Duncan v. Missouri*, 152 U.S. 372 (1893). Any principle that the federal government should have the power to regulate the rights, privileges and immunities of the citizens of a state would fetter and degrade state governments by subjecting them to the control of Congress and would change the old theory of the relations of the state and national governments. The *Slaughter-House Cases*, 16 Wall. 36, 74 (1872).

That this policy is directly applicable to disciplinary proceedings against attorneys of a state bar is shown in *Keeley v. Evans*, 271 F. 520, 522 (D. Ore. 1921).

> "It is beyond question that this, a federal court, has no power or authority to review, re-examine, or reverse the action of the State Supreme Court in denying a license to practice law in the state. The United States Supreme Court has so declared as to its own authority to re-examine or reverse, as a reviewing body, the action of a state court in disbarring a member of the bar of its own court. Selling v. Radford, 243 U.S. 46, 50, 37 S.Ct. 377, 61 L.Ed. 585, Ann. Cas. 1917D, 569. If that court has no such authority, it follows, by a much stronger reason, that this court possesses none.
>
> "Nor can this court interpose to give complainant affirmative relief, such as to require the Supreme Court of the state to issue him a license to practice law in the state. This follows by reason of the distinct organization of the two courts, one being national and the other state, between which there is no jurisdictional co-ordination as it respects the administration of state policy. A federal court will administer the laws of the state in controversies in which it is given jurisdiction,

but it will not interpose to direct or review the administration of state affairs."

In view of the foregoing principles, it was correctly held in *Emmons v. Smitt*, 149 F.2d 869 (6 Cir. 1945) that a federal court had no jurisdiction to enjoin the State Bar of Michigan and members of its Grievance Committee from continuing with a pending State Bar proceeding against plaintiff. The court stated:

> "We search in vain for a basis for jurisdiction of the District Court over plaintiff's action, in so far as it seeks to secure to him the right to practice his profession. The claim that it is found in subsection (14) of Sec. 41, 28 U.S.C.A. (Suits to redress deprivation of civil rights) is without merit, since plaintiff's right to practice law is not secured to him by the Constitution nor by any law of the United States. It is not a property right but a privilege granted by the State of Michigan. Ayres v. Hadaway, 303 Mich. 589, 6. N.W.2d 905; see also Bradwell v. State of Illinois, 16 Wall. 130, 21 L.Ed. 442; In re Lockwood, 154 U.S. 116, 14 S.Ct. 1082, 38 L.Ed. 929; In re Thatcher, D.C., 190 F. 969, 975." *Id.* at 872.

And as stated by the lower court in that case, "We cannot under the guise of 'constitutional rights violated' act as an appeal court under the Supreme Court of Michigan." 58 F.Supp. 869, 875 (1944).

In *Green v. Elbert, et al.*, 63 Fed. 308 (1894), plaintiff was disbarred from practicing in the courts of the state of Colorado. He brought action for damages in the federal district court against the judges of the Supreme Court of Colorado alleging that there was

no cause for disbarment and that the judgment of disbarment was a result of a conspiracy among the defendants. The court, in affirming the judgment of the federal district court dismissing the complaint for want of jurisdiction, stated:

> "It is contended that the subject-matter of the action is such as to give the circuit court jurisdiction . . . The judgment of disbarment in the state courts did not affect the right of the plaintiff to practice in the courts of the United States. The plaintiff derived his right to practice law in the state courts from the constitution and laws of the state, and not from the constitution and laws of the United States; and any invasion of this right through a conspiracy or otherwise was an invasion of his right as a citizen of the state, for which he must seek redress in the state courts in the absence of the requisite diverse citizenship, which alone could give the federal court jurisdiction. . . ."
>
> "A conspiracy to deprive a lawyer of his right to practice law in a state court is not a conspiracy to interfere with any right or privilege granted, secured, or protected by the constitution or laws of the United States. . . . It makes no difference that the judgment of disbarment in the state court was granted for what the plaintiff had said or done in the United States circuit court. The proceeding in the state court did not purport to interfere, and did not interfere, with the right of the plaintiff to practice law in the courts of the United States or with his prosecution of the case in which he made the allegations which were the groundwork of the proceedings for his disbarment in the state court. The judgment of the

court below dismissing the complaint for want of jurisdiction is affirmed." *Id.* at 308 and 309.

The rule enunciated in the *Bradwell* and *Lockwood* cases was accepted by the lower court in *Mitchell v. Greenough*, 100 F.2d 184, 185 (9 Cir. 1938):

> "We pause here to observe that the right to practice law in the state court has been held by the Supreme Court not to be a privilege granted by the Federal Constitution or laws. Bradwell v. State of Illinois, 16 Wall. 130, 21 L.Ed. 442; Ex parte Lockwood, 154 U.S. 116, 14 S.Ct. 1082, 38 L.Ed. 929. In Green v. Elbert, 8 Cir., 63 F. 308, the Circuit Court of Appeals held that the conspiracy to deprive a lawyer of his right to practice law in the state courts was not a conspiracy to interfere with any right or privilege 'granted, secured or protected by the Constitution of the United States.'"

The court took jurisdiction of the case pursuant to a federal statute not involved herein but dismissed it on the ground, *inter alia*, that the complaint did not state a cause of action in that there was no denial of due process.[3]

2. There was no denial of due process.

Petitioner has doggedly attempted to raise "substantial" questions of law based upon the contention that due process of law was not accorded her, in contravention of the First and Fifth Amendments to the Constitution of the United States.

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[3]No constitutional question of freedom of speech and due process rights was involved. See discussion of these points in Point II B and C, *infra*.

Respondent submits that "As to disbarment, due process requires only that an attorney have reasonable notice of the charges against him and a reasonable opportunity to be heard in his defense. *Ex parte Wall*, 107 U.S. 265, 271; *Selling v. Radford*, 243 U.S. 46, 51. The form of notice and the form and manner of hearing are left to the sound discretion of the court. *Montgomery Co. Bar Ass'n v. Rinalducci*, 329 Pa. 296, 197 A. 924." *Phipps v. Wilson*, 186 F.2d 748, 751 (7 Cir. 1951).

The court in the *Phipps* case further stated:

> "As the amended complaint shows that plaintiff was apprized of the charges filed against him, and that he had a reasonable opportunity to defend thereagainst, the procedure complained against did not violate a scheme of ordered liberty or a deep rooted principle of justice. In other words, we find that plaintiff was not denied federal due process of law.
>
> "Neither the propriety of the designation by the Supreme Court of Illinois of committees of the Chicago Bar Association to act as commissioners in disciplinary proceedings, nor the claim that such committees were prejudiced against the plaintiff herein raises a substantial federal question." *Id.* at 752.[4]

There is no allegation that petitioner was denied a fair hearing. To the contrary, the detailed recital of the painstaking procedures taken to protect petitioner's right to a fair hearing, wherever such recital

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[4]To the same effect, see *Randall v. Brigham*, 7 Wall. 523; *In re Henriques*, 34 Haw. 348 (1937); *In re Collins*, 188 Cal. 701, 206 Pac. 990, 993 (1922); *In re Ulmer*, 268 Mass. 373, 167 N.E. 749, 755-756 (1929).

appears of record and with which petitioner takes no issue,[5] bears ample evidence that she was accorded due process of law that satisfied every constitutional requirement. See *Bute v. Illinois*, 333 U.S. 640, 648 (1948), quoting from *Powell v. Alabama*, 287 U.S. 45 (1932), *Hebert v. Louisiana*, 272 U.S. 312 (1926); *Holden v. Hardy*, 169 U.S. 366 (1897).

The disciplinary proceedings against petitioner were instituted in the Supreme Court of the Territory of Hawaii by the Bar Association of Hawaii, an unincorporated association. The complaint was filed on July 8, 1954, under Rule 19 of the Rules of the Supreme Court of the Territory of Hawaii then in effect.[6] (R. 3-5.)

The complaint was referred on July 8, 1954 as secret file number 45 to the Committee on Legal Ethics and Unauthorized Practice of Law (hereinafter re-

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[5]See e.g., R. 107-115, R. 548-559, R. 585.

[6]Petitioner makes the charge that "when the attorney general took no action the bar association devised an amendment to the Territorial Court's rules permitting the association to file such complaints." (O.B. 20.) Petitioner seems to take the aggrieved posture of one being conspired against and persecuted by all of the members of the Bar. There is no such evidence of record to support this charge. And no such evidence can be shown. However, assuming *arguendo* that the charge is true, it is generally accepted that rules of court with regard to disciplinary proceedings against attorneys can operate retrospectively (*In re Noell*, 234 Mo. App. 1162, 96 S.W.2d 213); and that the statutory method and procedure for disciplining attorneys is not exclusive and does not fetter the courts in the exercise of their inherent power to proceed against unworthy attorneys. (*State v. Spivey*, 213 N.C. 45, 195 S.E. 1; *In re Rudd*, 310 Ky. 630, 221 S.W.2d 688.) It is also an elementary proposition that the *ex post facto* doctrine relates exclusively to criminal or penal statutes (11 Am. Jur. 1179), and it cannot be maintained that the procedural changes involved constitute a denial of due process to petitioner. (*In re Craven*, 178 La. 372, 151 So. 625.)

ferred to as the Ethics Committee). The Bar Association was ordered on September 21, 1954, to file a bill of particulars or to amend paragraph III of its complaint, making more specific its charge involving petitioner's interview with the juror in the *Fujimoto* case. The same order required petitioner to file such special pleas to the jurisdiction of the Ethics Committee, the sufficiency of the complaint and a clarification of her request that the hearing be postponed until after the disposition of the *Fujimoto* case (R. 95, 96). The bill of particulars was filed as ordered (R. 5-13) and petitioner, through her attorney, J. Garner Anthony, advised the said Committee by letter dated October 14, 1954, that she would file no special plea to the jurisdiction nor press for a continuance and announced herself ready to proceed. (R. 105.)

The Ethics Committee proceeded to hold a hearing on November 22, 1954, to investigate the charge made in the complaint, to wit: (1) the alleged improper conduct of petitioner in making the Honokaa speech, and (2) the alleged improper conduct in interviewing a juror in the *Fujimoto* case and filing an affidavit without disclosing all of the facts and circumstances connected thereto. Said Ethics Committee was composed of six respected members of the Bar. Petitioner was represented by J. Garner Anthony. (R. 135) Testimony of 19 witnesses and numerous exhibits were presented to the Ethics Committee on November 22, 23, and 24, and December 2, 3, 6, and 8, 1954. Said testimony covered 468 pages of the 628-page Transcript of Record. (R. 135-543.)

of the Canons of Professional Ethics of the American Bar Association. (R. 15-16.)

The Ethics Committee was of the further unanimous opinion that "it was improper for [petitioner] to submit her affidavit concerning the interview with the juror Fuller to the Presiding Judge under the circumstances under which it was submitted." (R. 16.)

After a study and consideration of the report of the Ethics Committee, the Supreme Court of the Territory of Hawaii, on July 8, 1955, pursuant to Rule 19, issued to petitioner an order to show cause why the findings, conclusions and recommendations of the Ethics Committee should not be adopted. (R. 131.) The cause was then removed from the secret files to the regular files of the court.

Petitioner was granted an extension of time to September 19, 1955, within which to answer the order to show cause, by order filed July 27, 1955. Further extensions of time to answer were granted petitioner at her request or upon motion. (R. 132.)

Instead of a return to the order to show cause, petitioner then filed, on October 19, 1955, a motion to dismiss the order to show cause. Various memoranda were filed and a hearing held. The motion was denied. (R. 132.)

More time for filing petitioner's return to the order to show cause was requested by petitioner and granted to December 2, 1955, and argument set for January 9, 1956. (R. 109.)

After these hearings, the Ethics Committee, on July 1, 1955, filed a report of the charges, facts and conclusions pursuant to Rule 19 (R. 14-18). The Ethics Committee found that petitioner, while one of the attorneys for certain defendants in the *Fujimoto* case, made a speech at a public gathering at Honokaa during the course of the trial, "at which she said among other things, that horrible and shocking things were going on at the trial; that there was no fair trial of the case; that they just made up the rules as they went along, that unless the Smith Act trial was stopped in its tracks in Honolulu there would be a new crime." (R. 15.)

The Committee further found that after the verdict in the *Fujimoto* case, petitioner visited one of the jurors, David P. Fuller, Jr., while he was in a very poor mental and physical condition, and, in submitting her affidavit concerning said interview, petitioner "did not fully disclose to the court the condition of Mr. Fuller, nor the fact that she had attempted to get affidavits from Mrs. Fuller, who refused to sign one, and could not get an affidavit from Mr. Fuller because of his condition." (R. 15.)

Upon these findings, the Ethics Committee was of the unanimous opinion that the charges of the complaint were sustained by the evidence, and that comments made at Honokaa imputing to the judge unfairness in the conduct of the *Fujimoto* trial and impugning the integrity of the local federal courts, and other comments made at Honokaa violated Canons 1 and 22

On November 7, 1955, petitioner filed a motion for reconsideration of the order denying the motion to dismiss the order to show cause. The motion was also extensively argued and denied by order filed November 29, 1955. (R. 132.)

A return to the order to show cause was finally filed by petitioner on December 2, 1955. (R. 18-22; 133.) Another motion for continuance by petitioner followed and another hearing was held. (R. 133.)

On the date set for trial, January 9, 1956, a pre-trial conference was held with all counsel present. Two days later, another delay was occasioned by a suggestion of disqualification of Associate Justices Stainback and Rice of the territorial Supreme Court. (R. 47-70; 133.) Extensive argument again followed. The territorial court held that neither justice was disqualified. (R. 71-90; 133.) However, Mr. Justice Stainback withdrew *sua sponte* from the hearings. (R. 90, 133.)

It was determined at the pre-trial conference that, under Rule 19 of the Rules of the Supreme Court of the Territory of Hawaii, petitioner was entitled to a *de novo* hearing before the Supreme Court. Petitioner, however, through her counsel, suggested and respondent consented to a submission to the court upon the entire transcript of the record and exhibits developed and submitted to the Ethics Committee. (R. 113.) Briefs were duly filed and an extensive oral argument held March 1, 1956.

By opinion filed April 6, 1956 (R. 93-126), the territorial court found *inter alia* that the allegations in the

complaint were "sustained by convincing proof, by credible evidence of more than a mere preponderance"; that petitioner, while an attorney of record in the *Fujimoto* case and during the course of the trial, did say in her public speech in Honokaa, Hawaii, "that horrible and shocking things were going on at said trial, that a fair trial was impossible, that all of the rules of evidence were being scrapped so that the government could make its case; that the rules of evidence and procedure were made up as the case proceeded, and that unless the trial was stopped in its tracks certain new crimes would be created" (R. 116-117); that petitioner exhibited an evasiveness and lack of frankness as to her conduct and equivocated when faced with the testimony of witnesses, yet admitted authorship of language in a pamphlet entitled "Fear" (Exhibit 6) which revealed great similarity with the language attributed to her in her Honokaa speech (R. 115-116); and that shortly after the verdict in the *Fujimoto* case, petitioner visited a juror in that case and studiedly interrogated him, despite said juror's mental and physical condition of which she was aware. (R. 117.) The court found from the testimony and evidence before it that petitioner engaged and participated in a wilful oral attack upon the administration of justice in and by the United States District Court for the District of Hawaii in the *Fujimoto* case and by direct statement and implication impugned the integrity of the judge presiding in the then pending *Fujimoto* case, and thus tended to also create disrespect for the courts of justice and judicial officers generally. (R. 117-118.)

Upon the finding of gross misconduct with respect to the Honokaa speech, the territorial court suspended and prohibited petitioner from the practice of law for a period of one year and to pay all costs and expenses of the proceedings. (R. 118.)

The territorial court also found that petitioner's repeated and studied interrogation of the juror Fuller amounted to gross misconduct but let its disciplinary order of one year suspension and payment of costs suffice.[7] (R. 121.)

A notice of appeal to the United States Court of Appeals for the Ninth Circuit was filed by petitioner on April 13, 1956. (R. 128.)

On the same date and upon her request, petitioner was permitted to maintain the status quo of her business affairs pending appeal to the court below for a stay of suspension. (R. 134.) Said order was extended by the territorial court at petitioner's request on April 26, 1956. (R. 134.)

Petitioner filed a motion in the court below for a stay pending appeal of the order of suspension, or for

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[7]The court specifically found that petitioner's repeated interviews with and interrogations of juror Fuller constituted gross misconduct. (R. 121.) Inasmuch as a one-year suspension and charge of costs had already been adjudged on the Honokaa speech charge, the court let that disciplinary order suffice. It is the contention of respondent that the decision to let such disciplinary order stand as it did was predicated upon the continued validity and effectiveness of the discipline on the Honokaa speech charge. The court below found the penalty for the two charges as being imposed concurrently. If the punishment in the Honokaa speech charge is reversed, the juror charge should be referred back to the territorial court to determine the sanction to be applied. (R. 568.) Be that as it may, both charges were found by both courts to be sustained by the evidence. One of the concurring judges on the territorial court recommended disbarment. (R. 123.)

a writ in aid of that court's jurisdiction dated April 23, 1956. Said motion was granted on May 23, 1956. (R. 623-624.) Circuit Judge Lemmon dissented. (R. 625-628.) Thence followed two more hearings on a motion to dismiss and on the merits. A judgment of the court below was filed on June 9, 1958. (R. 547-622.)

It seems patently clear from the foregoing that petitioner had more than her day in court. She was accorded due process of law that met every demand under our Constitution. Reasonable notice of the charges against her, a reasonable opportunity to be heard in her defense, eminent counsel of her own choosing, protracted hearings with free and full exercise of her right of confrontation, presentation of testimony, examination and cross-examination of witnesses, an opportunity for a *de novo* hearing, and abundant leeway from the standpoint of time and number to file motions and demands of varied forms and hues were all accorded her.

The court below was obviously aware of the roadblocks to its jurisdiction over the matter. It took jurisdiction by the "narrowest thread." (R. 567.) The sense of its jurisdiction, it candidly admits, is highly conjectural. The narrow limits of review involved in *Konigsberg v. State Bar*, 353 U.S. 252 (1957) and *Schware v. Board of Bar Examiners*, 353 U.S. 232, do not strengthen its weak thread of jurisdiction. This Court's latest pronouncement in *Theard v. United States*, 354 U.S. 278, it would seem, should snap the chain by which jurisdiction was purportedly found by the court below. A charge of a constitutional depriva-

tion and impingement, no matter how vigorously canted, should not present a one-way ticket to a review of a local disbarment proceeding. Due process as required by *Ex parte Wall*, 107 U. S. 265 (1882), having been amply satisfied, respondent submits that jurisdiction should have been refused.

II.

THE JUDGMENT OF THE TERRITORIAL COURT, AFFIRMED BY THE COURT BELOW, SUSPENDED PETITIONER FROM PRACTICE IN THE TERRITORIAL COURTS ONLY AND CREATES A STANDARD OF CONDUCT OF AN ATTORNEY THAT AFFECTS HER LICENSE TO PRACTICE IN THE TERRITORIAL COURTS ONLY. THE RIGHT TO DETERMINE WHO SHALL BE A MEMBER OF THE TERRITORIAL BAR IS WITHIN THE SOLE JURISDICTION AND POWER OF THE TERRITORIAL COURT.

Petitioner and *amicus curiae* herein, maintain that the judgment of suspension by the Supreme Court of the Territory of Hawaii, affirmed below, constitutes interference by the territorial court with the administration of justice by the federal court. The Honokaa speech was concerned with proceedings then going on in the federal court; the interview was that of a juror who served those federal court proceedings. Therefore, it is reasoned, the standards of behavior by petitioner should be set by the federal court. The inexorable adjunct to this rationale, carried to its logical conclusion, is that as long as petitioner misconducts herself on the federal side of the street, it is none of the Territory's business. The Territory must turn its eyes away until she misconducts herself

on the territorial side of the street. This, despite the fact that she is a member of the territorial bar.[8]

Such an argument ignores the rule enunciated over and over again by this Court that the power to disbar for misconduct of an attorney is incidental to the licensing authority. The ruling consideration is the preservation of the bar and maintenance of justice, unsullied by the ministrations of persons unwilling or unable to uphold the dignity of the profession and to improve not only the law but the administration of justice. *Ex parte Burr*, 9 Wheat. 529; *Ex parte Secombe*, 19 How. 9; *Ex parte Wall*, 107 U.S. 265; *Brad-*

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[8]In this connection, respondent insists that the federal judge must have determined that petitioner's conduct transgressed no federal rules, since Judge Wiig and the District Court took no action. She also points with pride to the praise of counsel at the end of the *Fujimoto* case. (O.B. 73, n.) Suffice to say that 18 U.S.C. § 401 limiting contempt action to misbehavior of any person in the court's presence or so near thereto as to obstruct the administration of justice has geographical limitations which made a contempt action by Judge Wiig out of the question. (*Nye v. United States*, 313 U.S. 33.) The so-called ecomium of Judge Wiig to all counsel for their demeanor in the courtroom cannot be stretched to include petitioner's Honokaa speech. Judge Wiig was not satisfied with petitioner's evasive explanation of her speech and referred it to the U. S. attorney for investigation and possible contempt charges. After being informed of the limitations against a contempt citation in this instance, he referred the matter to the Bar Association for appropriate action. (R. 537-541.) The United States District Court of the District of Hawaii also issued an Order of Suspension against petitioner (In the Matter of Harriet Bouslog Sawyer, also known as Harriet Bouslog, an Attorney at Law, Misc. No. 649) which ordered that petitioner be suspended forthwith from practice before that court, such suspension to continue until she shows good cause to the contrary pursuant to Rule 1(d) of the Rules of Civil Procedure of that court and further that petitioner have twenty days from date within which to show cause why that court should not enter an order of disbarment or of suspension for such time as the court shall fix. On June 20, 1956 stay of the order of suspension was signed by Federal Judges McLaughlin and Wiig.

ley v. Fisher, 13 Wall. 335. Misconduct, whether on the federal or territorial side of the street, is misconduct that invites and merits stern and just condemnation by either or both courts.

Petitioner slights the import of *In re Isserman,* 9 N.J. 269, 87 A.2d 903, in this connection. She states that the state court (New Jersey) determined the fitness of Isserman to remain a member of its bar on the basis of the federal court's determination that he had committed an offense against the federal court. That case indicates that the state court, as the jurisdiction primarily responsible for Isserman's conduct at the bar, applied its own standard of conduct to the actions of Isserman before the federal court. No other conclusion can be reached from the following words of Chief Justice Vanderbilt:

> ". . . The respondent must be judged by the standards of practice prevalent here. It is unthinkable that any one of the many incidents for which the respondent was convicted of contempt in New York could have occurred in New Jersey. The mutual respect that our bench and our bar have traditionally had for each other and their high regard for the administration of justice would have precluded any such conduct by an attorney here. . . . In fairness to the courts of other jurisdictions and out of a decent respect for the opinion of the people of this State, we cannot permit a lawyer admitted to practice in New Jersey to do in the courtroom of another jurisdiction what he would never have been allowed to do here. To do so would bring into disrepute our bar, our bench and our entire judicial establishment." *Id.* at 907.

We are not concerned here with an evaluation of what is the proper procedure to be followed by the federal and territorial court in circumstances of this nature. The mere fact that New Jersey waited until the federal court acted is no authority for the proposition that *Isserman* supports petitioner's position. True, New Jersey accepted the evaluation of Isserman's conduct by the federal court and accepted the fact that Isserman was disciplined by the federal court. But New Jersey did not discipline Isserman merely because the federal court did so. New Jersey judged Isserman by the standards of practice prevalent in New Jersey. The determination of the standard of conduct required of an attorney licensed in New Jersey was not made dependent upon the determination of the standard of conduct required by the federal court.

Thus, the determination in *Isserman* declared the law for New Jersey. It declared a standard of conduct for attorneys licensed to practice in New Jersey to be followed in any jurisdiction, local or federal. The determination of the courts below in the case at bar did nothing more than *Isserman*. It did not establish "standards of conduct for federal attorneys in cases before federal courts" as charged by petitioner. It established a standard of conduct for attorneys licensed by the territorial court to be followed and observed by such Hawaii attorneys in any jurisdiction, local, state, or federal. There was no usurpation of the federal court's power. Indeed, the federal court is free to bring disciplinary proceedings against peti-

tioner irrespective of the action of the territorial court.[9] See *Selling v. Radford*, 243 U.S. 46; *In re Isserman*, 345 U.S. 286, 348 U.S. 1; *Theard v. United States*, 354 U.S. 278.

The two cases cited by *amicus curiae*, *Ex parte Tillinghast*, 4 Peters 108, and *Ex parte Bradley*, 7 Wall, 364, do not differ from the rule herein urged. *Tillinghast* does not prevent any other court or jurisdiction from inquiring into the fitness of its licensees for misconduct elsewhere. Its only limitation is against summary action or punishment based upon a contempt committed in another court. *Bradley* explicitly recognizes the right of another court or jurisdiction to discipline or disbar its licensees for misconduct before another court or in another jurisdiction. This Court in *Bradley* held that the lower court exceeded its authority in disbarring Mr. Bradley on the basis of a contempt committed in another court and on the basis of "an ex parte proceeding, without notice or opportunity of defense or explanation for misbehavior," and "'irrespective of the doctrine of contempts.'" *Id.* at 374-375. It therefore seems clear that the error of the offending courts in *Tillinghast* and *Bradley* was in summarily disbarring merely upon the determination of contempt by another court. In passing, if New Jersey in *Isserman* had, in fact, disciplined Isserman only on the basis of the contempt determination of the

[9]The United States District Court for the District of Hawaii issued an Order of Suspension dated April 7, 1956 against respondent (In the Matter of Harriet Bouslog Sawyer, also known as Harriet Bouslog, an Attorney at Law, Misc. No. 649) pursuant to Rule 1(d) of the Rules of Civil Procedure of that court. This order was stayed on June 20, 1956.

federal court, as petitioner herein insists, Isserman would have run afoul of the rule in *Tillinghast* and *Bradley*. Instead, New Jersey brought its own disciplinary proceedings against Isserman, gave notice to appear and opportunity to be heard and made its own determination on the basis of its own standards of conduct for attorneys practicing in New Jersey. This is precisely what the territorial court did in the case at bar. Such action in no way interfered with the administration of justice in the federal court or set up standards of conduct for federal attorneys practicing in federal courts.

Selling v. Radford, 243 U.S. 46 puts into sharp focus what respondent contends for herein. The ruling in *Tillinghast* is distinguished and limited as above. *Id.* at 51. This Court, in dealing with a petition to disbar from federal practice on the basis of disbarment from state practice, recognized that the right to practice in this Court could be taken away only by its own determination. *Id.* at 41. It was further recognized, however, (a) that this Court had no authority to re-examine or reverse as a reviewing court the action of the state court in disbarring a member of its bar from practicing in the state courts for personal and professional misconduct, (b) that the order of disbarment is not binding on this Court as the thing adjudged in a technical sense, but (c) the necessary effect of the state court action would be to show absolutely the lack of private and professional character necessary for the practitioner's right to continue to be a member of the federal bar, unless for some rea-

son the state court action is not accepted. *Id.* at 50. It is clear from the foregoing that disciplinary proceedings by the local state jurisdiction are not limited only to misconduct committed beyond the confines of federal court jurisdiction. Each jurisdiction, in its own right, may impose reasonable standards of conduct on its practitioners in or out of court and in any court.

The disciplinary case of *Geibel v. State Bar of California*, 11 Cal.2d 412, 79 P.2d 1073, 1074, 1075 (1938), *cert. den.* 305 U.S. 653, *reh. den.* 305 U.S. 676, clearly states the rule applicable herein, citing *Selling v. Radford*:

> "If an attorney admitted to practice in the courts of this state commits acts in reference to federal court litigation which reflect on his integrity and fitness to enjoy the rights and privileges of an attorney in the state courts, proceedings may be taken against him in the state court. People v. Green, 9 Colo. 506, 13 P. 514, 524; State v. Grover, 47 Wash. 39, 91 P. 564; In re Lamb, 105 App. Div. 462, 94 N.Y.S. 331; In re Sherwood, 259 Pa. 254, 103 A. 42, L.R.A. 1918D, 447; Selling v. Radford, 243 U.S. 46, 37 S.Ct. 377, 61 L.Ed. 585, Ann. Cas. 1917D, 569; 5 Am. Jur. 433; 7 C. J. Sec., Attorney and Client, § 18, p. 730."

This Court recently recognized the same rule in *Theard v. United States, supra,* stating that "The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers; among whom, in the pres-

ent context, lawyers are included." *Id.* at 281. This Court made it clear that it was not sitting in review of the state court judgment of disbarment of respondent therein. Recognition was accorded the state court judgment insofar as the state disbarment was concerned; the federal disbarment proceeding of the same attorney for the same alleged misconduct to determine his fitness to practice in the federal courts only was deemed the responsibility of the federal judiciary. The "deference" which the petitioner herein insists on imposing upon the territorial and federal courts, each to the other, is of no moment here. Each court, in pursuit of its autonomous control over its attorneys and its inherent authority to maintain the honor and integrity of a profession which depends upon public trust and confidence for its very existence, is permitted and, in fact, obliged to demand that all lawyers meticulously adhere to the standards of conduct that would merit such public trust and confidence. As stated by the court below, the Territory should be commended rather than chided for so doing. (R. 566.) The federal law, recognizing this inherent right, has been enunciated by this tribunal from its earliest pronouncement by Mr. Chief Justice Marshall in *Ex parte Burr* to the most recent pronouncement by Mr. Justice Frankfurter in *Theard*.

III.

THE RECORD IN THE SUPREME COURT OF THE TERRITORY OF HAWAII AND IN THE COURT BELOW RATIONALLY SUPPORTS THE FINDINGS BELOW.

A. The action of the disciplining court, affirmed by the court below, in suspending petitioner from the practice of law for one year, in the exercise of its statutory and inherent power to insure the dignity and proper function of judicial processes is amply supported by the evidence and does not offend due process.

Point One of petitioner's brief (O.B. 30-63) seems to amount to a well-contrived assertion that petitioner did not mean to say what the courts below found that she said. She insists that when she spoke of "the horrible and shocking things (that) were going on at the current Smith Act trial in Honolulu," she meant to attack and impugn the integrity of government agents for "their tactics of prosecution, their methods of recruiting witnesses, their 'propaganda', their use of obviously unreliable witnesses." (O.B. 35.) And the other horrible and shocking thing that she was referring to was the Smith Act which was a weapon of thought control. (O.B. 35.)

She further insists that when she said that the trial was not a fair one, she meant that the trial was not a fair one because it was made unfair by the government through the scrapping of the rules of evidence, through the use of perjurious witnesses who "say things in order to convict," through a propaganda barrage so that hysteria about communism infects the jury, through F.B.I. pressure to force people to testify as it wants. (O.B. 36-37.) Judge Wiig, the

presiding judge in the *Fujimoto* case, apparently had nothing to do with the unfair trial she was talking about.

She insists again that when she said "all rules of evidence have to be scrapped and the government can't make a case," she was talking about conspiracy cases in general. (O.B. 37-38.) Her remark that "with the same situation a federal judge sitting on a federal bench permits Crouch to testify about 27 years ago" was made to illustrate the difference between rules of evidence in conspiracy cases in general and the *Palakiko-Majors* murder case. Therefore, the point is made that Judge Wiig was not charged with wrongdoing or lack of integrity (O.B. 38) and that this line of discussion "simply explains the results of the application of rules of law in the case at hand." (O.B. 38.) Again, petitioner maintains that "there's no fair trial in the case. They just make the rules as they go along" (R. 577), was also addressed to the operation of rules of evidence in conspiracy cases and the government's evil hand in expanding the scope of admissibility (O.B. 38). Judge Wiig, again, was nowhere around and the unfairness of the trial was the dirty work of the prosecution who dictated what evidence would be admitted.

The remark that unless the Smith Act trial at Honolulu was stopped in its tracks there would be a new crime, according to petitioner, was made in the context of observation about another Smith Act trial and the dangers of thought control and censorship. (O.B. 39.)

In summary, the whole thrust of the Honokaa speech, to hear petitioner explain it, was a learned discussion of the horrible and shocking things that can and do occur in courtrooms without any fault of the judge and without reflecting upon his judicial integrity. This, because "unfairness of a trial may result from many things beyond the judge's control." (O.B. 44.) Therefore, what petitioner was disciplined for, in the words of petitioner, "was not animadversion upon the judge but rather attack upon the Department of Justice and certain rules of law." (O.B. 49.)

Respondent agrees with the majority below that petitioner's counsel has interwoven, with great deftness, "the defense version of the testimony into the bar association's evidence pointing the other way" (R. 561) and that petitioner "overly dissects the evidence and puts too innocent a gloss on it." (R. 564.) Despite petitioner's claim that her argument is based upon an analysis of the news reporter's notes (O.B. 31) the fact remains that what she said at Honokaa is what is before the court and not what she meant to say, upon more sober reflection, or what she was supposed to have said or meant to say, with the aid, in retrospect, of skilled counsel.

To put the so-called "textual remarks" (O.B. 35) in the notes of the news reporter and the abundant testimony of record in proper perspective, the Honokaa speech must be taken in its entirety and must be viewed within the setting of the day. Petitioner does not deny that she made the speech to a gathering

consisting largely of members of the International Longshoremen's and Warehousemen's Union at Honokaa, Hawaii, while serving as counsel for certain respondents, including Jack Hall, in the *Fujimoto* case then at trial in Honolulu before the Honorable Jon Wiig, United States District Court Judge for the District of Hawaii. The meeting was held under the auspices of the defense committee set up by the I.L.W.U. (R. 410). Jack Hall, one of the defendants in the *Fujimoto* trial was the Regional Director of the I.L.W.U. (R. 385.) The defense committee was established to undertake and finance the defense of Jack Hall and any other union member defendant under the Smith Act. (R. 401-402.) It was handling the financial contributions to this end. (R. 402.) The meeting at Honokaa, however, was not held for the purpose of securing further contributions, because the contribution program of the defense committee had been set up and approved long prior to the time of the Honokaa meeting. (R. 410.) The meeting at Honokaa was for the purpose of reporting back about the Smith Act trial to those who contributed to Jack Hall's trial. (R. 410.)

Jack Hall, one of the defendants in the Smith Act trial then going on in Honolulu being defended by petitioner, was on the speakers' rostrum with petitioner and also gave a speech following petitioner's speech. (R. 574.)

This is the framework within which the questions involving the Honokaa speech must be viewed. The audience was composed of a majority of union mem-

bers who had contributed to the defense of petitioner's client, Jack Hall. They were conceivably there to hear about how their money was being spent. It is reasonable to assume that these laymen were more interested in the details of the immediate trial rather than in a lawyer's general critique on the provisions of the Smith Act. The stage was thus set for Jack Hall's lawyer's speech.

Petitioner, as discussed above, insists she spoke of Smith Act trials in general. The evidence is otherwise. Virtually all of the testimony in the case undeniably points to the fact that petitioner was referring to the trial then going on in Honolulu. The evidence indicates that petitioner commenced her speech by pointing out that "the trial is really a trial of Jack Hall" to which six others had been added, the purpose being to get at the I.L.W.U. (R. 574.) No reasonable mind would deny that this statement referred to the *Fujimoto* trial.

The news reporter Matsuoka positively testified that petitioner was talking about "[t]he Smith Act trial, that was under way in Honolulu." (R. 150.)

The testimony of Mrs. Thelma Olival, another witness, corroborates this in positive terms:

"Q. Now what trial was she referring to?

A. To the Jack Hall trial.

Q. Do you know where that trial was being held?

A. In Honolulu here.

Q. There is no doubt in your mind that she was referring to that trial?

A. Oh, yes, she was referring to it." (R. 172.)

Ethel Chong Andrade, a plantation worker, testified that petitioner gave "a very excellent speech", "a very interesting", "very stimulating" talk and that Mrs. Bouslog "said she would like to tell the audience of the horrible and shocking things that went on at the Smith Act trial in Honolulu" and "she also gave several illustrations". (R. 180-181.)

David K. Crabb, another witness, definitely stated that petitioner, in saying that "the defendant in the Smith Act trial cannot get a fair trial", was talking about the Smith Act trial in Honolulu. (R. 183.)

Another witness, Mrs. Phyllis P. Morse, also testified that "she (petitioner) said there was no such thing as a fair trial under the present Smith Act case in Honolulu." (R. 184.)

These statements were put in honest and candid perspective by petitioner's own counsel, J. Garner Anthony, toward the close of the Ethics Committee hearing, thusly:

> "Mr. Anthony. I will say to the Committee right now—I have read these speeches and I would agree with the conclusion implicit in Mr. Dodge's question, namely that *this was a talk about what was going on in the Smith Act trial here in Honolulu. Now let's not fool ourselves about that. We're lawyers here.*" (Emphasis added.) (R. 526.)

The foregoing testimony amply supports the conclusion that petitioner's remarks were directed towards the Smith Act trial in Honolulu. Her speech

cannot be glossed over as being generalized comments on the Smith Act or all Smith Act trials.

Petitioner insists that her attacks on what was going on at the trial did not encompass the trial judge. (O.B. 39, 40, 41.) Apparently in view of the abundant corroboration of this fact in the record, petitioner does not make an issue of whether or not she actually said that shocking and horrible things went on at the trial. The news reporter Matsuoka noted that petitioner "said she wanted to tell about some rather shocking and horrible things that go on at the trial." (R. 574.) He also testified that

> ". . . She said she wanted to tell the people about some of the shocking, horrible things that went on, and that the Smith Act trial could not be a fair one, and that they just had to go around and make rules to fit the situation. . . ." (R. 151.)

Mrs. Olival positively testified that petitioner used the words "shocking and horrible things that were going on" in characterizing the Smith Act trial in Honolulu. (R. 172.)

Mrs. Phyllis P. Morse remembered that petitioner gave "various examples of things that I don't recall, that were going on, in what she called the horrifying, shocking trial." (R. 185.)

Petitioner's only contradiction of this overwhelming evidence of record is her testimony that she has no recollection of having made such a statement. (R. 527.) Through her counsel, J. Garner Anthony, she stated that she will not deny having made the state-

ment. (R. 528.) In addition, there is of record the abortive attempt by petitioner's client, Jack Hall, to take the blame for saying that some rather shocking and horrible things are going on at the trial. (R. 395-398.)

Without belaboring this point in view of the weight of the evidence against the probability that no such statement was made in her speech, petitioner argues that there is nothing wrong with such a statement. She points out that many shocking and horrible things go on in the courtroom without any fault of the judge. (O.B. 41-42.)

Petitioner's major premises and attack upon the import of this charge start off on a misleading tangent, (O.B. 35), despite her resolve at the outset not to engage in "deft interweaving" of the evidence. (O.B. 31.) She maintains that when she said she "wanted to tell about some rather shocking and horrible things that go on at the trial" (R. 574), this was "obviously an introductory remark by way of preface to the speech as a whole." (O.B. 35.) Even assuming this to be a prefatory statement, it is submitted that what followed very definitely attributed much of the shocking and horrible things to Judge Wiig.

The courts below, therefore, found that the charges did constitute an attack upon the administration of justice and did impugn the integrity of the presiding judge and did tend to create disrespect toward the courts and judicial officers. These findings are established by clear and convincing proof. The news reporter Matsuoka notes that petitioner charged that

"there is no such thing as a fair trial in a Smith Act case. All rules of evidence have to be scrapped or the government can't make a case . . . there's no fair trial in the case. They just make up the rules as they go along." (R. 577.)

The "federal judge sitting on a federal bench" attacked by her in this connection could not have been Judge Medina or any other judge but Judge Wiig. (R. 577.) Petitioner makes much of the words "a" and "they" in her version of what she meant to say at Honokaa. Her obvious reference to and attack upon Judge Wiig is followed by "and yet here *they* permit a witness to tell what was said when a defendant was five years old." (R. 577.) "They" referred to Judge Wiig, also, the "federal judge sitting on a federal bench" who permitted Crouch to testify about 27 years ago. (R. 577.) In fact, a conspiracy between judge and prosecution could rationally be inferred. This reference is made not to fall into petitioner's pitfall of overly dissecting the evidence, but to emphasize the fallacy of such dissection to prove a point.

Matsuoka testified at the hearing that petitioner charged "that the Smith Act trial could not be a fair one, and that they just had to go around and make the rules to fit the situation." (R. 151.)

In fact, petitioner admitted before the Committee and to Judge Wiig that she did charge that "There's no such thing as a fair trial in the Smith Act case" (R. 443, 444), and in explanation of this charge, she added that there is no such thing as a fair trial in

any Smith Act case, including the Smith Act case then going on in Honolulu. (R. 445.)

Mrs. Thelma Olival also testified that "Jack Hall was being tried on something that he read many years ago, and she said that in the Smith Act trial there were no rules, and that they were making up the rules as they went along. . . ."(R. 172.)

Daniel Ramos also testified that "she said there was no fair trial in the Smith Act case." (R. 179.) So did David K. Crabb who testified that petitioner said the defendant in the Smith Act trial in Honolulu cannot get a fair trial. (R. 183.)

Mrs. Phyllis P. Morse corroborated the fact that petitioner attacked the type of evidence being admitted in the *Fujimoto* trial, thusly: "A. Well, she said that the government could submit any evidence they liked at any time, and that they could also use books that might not have any bearing on the case." (R. 185.)

No reasonable mind should deny that the references to the unfairness of the trial were directed at the trial over which Judge Wiig was then presiding. It would only be by some abortive reasoning which the courts below could not and did not stomach and which this Court should not countenance, that Judge Wiig could be left out of the picture and his integrity left unscathed.

In support of this attack—that there could be no fair trial in the Smith Act case because all of the rules of evidence have to be scrapped so the government

could make its case and the rules of evidence and procedure were made up as the case proceeded—petitioner specifically referred to various happenings which were transpiring in the Smith Act case then being tried in Honolulu. In fact, petitioner admitted picking four illustrations from the *Fujimoto* case to speak about in this connection, specifically naming Johnson and Crouch, two witnesses who testified in the *Fujimoto* case. (R. 450-451.) In referring to the testimony of Johnson, she stated that Johnson came back from San Francisco with Communist books and literature in a duffel bag, that Johnson testified that when he got to Honolulu he told Jack Hall the names of some of the books. She charged that the government then for two days of the trial read from the books supposed to have been in the duffel bag and not with what Jack Hall said. She further stated that on cross-examination Johnson testified that he didn't show the books to Jack Hall, but showed only the duffel bag. (R. 576.) The reference to widening of the rules of evidence to include "everything including the kitchen sink" was also made in this context. (R. 577.)

Petitioner's client, Jack Hall, confirmed the news reporter's notes on this point. He testified that petitioner did talk about the testimony of Johnson in the Smith Act trial in Honolulu. (R. 406.) He also testified that petitioner talked about the "duffel bag evidence" in this connection. (R. 406.)

Petitioner also testified: ". . . I did make a statement concerning Mr. Johnson showing Mr. Hall a duffel bag containing books and I explained on the

basis of Mr. Hall's having seen the duffel bag, the books contained in the duffel bag had been admitted into evidence." (R. 455.)

Petitioner's charge about Johnson's testimony is also confirmed by John D. Morse. (R. 167.)

The record discloses that petitioner also referred to the testimony of Paul Crouch, another witness in the *Fujimoto* trial. (R. 450.) Petitioner specifically admitted that she referred to Crouch's testimony in order to show the people present what kind of testimony was going on at the trial. (R. 454.)

The news reporter Matsuoka's notes state that petitioner charged that in the *Majors-Palakiko* habeas corpus case in which petitioner was involved, the Supreme Court of the Territory refused to allow the testimony of a woman who reported to her that a police officer beat a confession out of one of her clients because the police officer was not present to deny her testimony. Yet "with the same situation a federal judge sitting on a federal bench permits Crouch to testify about 27 years ago, what was said then." (R. 577.)

When questioned about the evidence, petitioner testified thusly:

> "The Witness. Those are not my words. The substance, the fact that I was in the Majors-Palakiko case—that in that case the Supreme Court of the Territory had refused to permit Mrs. Hughes' testimony; that Vernon Stevens had told her that he had beaten Palakiko was not permitted by the Supreme Court; whereas in the

Smith Act case in general, as well as in this Smith Act case, people who had been many years away and had never seen this defendant were permitted to testify.

Mr. Barlow. In other words, would it be fair to say that you paralleled that with the phrase that Mr. Matsuoka attributes to you: 'With the same situation, a Federal judge sitting on a Federal Bench, permits Crouch to testify about 27 years ago what was said then'?

The Witness. I used the Palakiko-Majors case as a contrast to Mr. Crouch's testimony and the hearsay testimony in the conspiracy case.

Q. That Judge Wiig was allowing in the present Smith Act case, is that right?

A. The motions hadn't been argued yet.

Q. No, but that Judge Wiig was allowing in the present Smith Act case?

A. Yes, he was." (R. 457.)

The attack on the action of Judge Wiig in the *Fujimoto* case as compared with the action of the territorial court in the *Majors-Palakiko* case is also referred to in the recorded testimony of Gilbert Ferreira. (R. 163.)

In her attempted contradiction of this evidence, petitioner insists that in charging that there is no such thing as a fair trial in the Smith Act case, she was referring to Smith Act cases in general. This contention has no basis in fact. It is firmly established by the foregoing evidence that her charge was directed toward the *Fujimoto* trial. Even assuming *arguendo* that said charge was meant to refer to Smith Act

cases in general, she illustrated and explained her charge with attacks on what was going on at the *Fujimoto* trial. The *Fujimoto* trial being a Smith Act case, the syllogism is manifestly complete. Her contention that she was talking in generalities seems quite lame in the face of her attacks on the type of testimony being admitted in evidence in the *Fujimoto* trial. In illustrating the unfairness of Smith Act cases with specific attacks on Judge Wiig's actions in the *Fujimoto* case, her purported generalities patently ceased to remain generalities.

Petitioner attempts to explain that her charge that all of the rules of evidence were being scrapped so that the government could make its case and that the rules of evidence and procedure were made up as the case proceeded were not directed at Judge Wiig or the court. She points out that Judge Wiig was never mentioned by her. She emphasizes that the pronoun "they" (meaning the government) was used. She contends that her remarks were directed towards the conduct of the prosecuting attorneys and to certain rules of law. (O.B. 40, 49.)

There is one primary and patent fallacy in these contentions. It is hornbook law that needs no citation of authority that rules of evidence and procedure in any trial are not made by the prosecuting attorneys. That is within the sole and exclusive province of the judge. It is the judge who rules upon the competency, relevancy, and materiality of any evidence offered by the prosecution or the defense. It is the judge who rules upon the proper procedure at the trial. If there

be any scrapping of the evidence to permit the prosecution to make a case, if there be any rules of evidence and procedure "made up" as the case proceeds, it is the unjudicial handiwork of the judge and no one else. It follows that the charge that "all rules of evidence have to be scrapped so the government could make its case" and that "the rules of evidence and procedure were made up as the case proceeded" was an unvarnished attack which "by direct statement and implication impugned the integrity of the presiding judge" and was an attack upon the administration of justice in and by the said court. The courts below so concluded, and properly so. The conclusion also follows that such attacks, not by a layman, but by an officer of the court favored with the mantle of respectability and authority of a license to practice law, most assuredly tended to create disrespect towards the courts and judicial officers. The courts below so concluded, and properly so.

Only a few words need be said about the finding that petitioner charged that "unless the trial was stopped in its tracks certain new crimes would be created." Petitioner does not attack the finding that petitioner made such a statement; she only attacks the conclusion that she attacked the administration of justice and impugned the integrity of Judge Wiig. (O.B. 39-40.) Petitioner again attempts to isolate this charge from the fabric and framework of her speech. Since petitioner does not attack this finding, it is presumed that the record discloses that said finding has a reasonable basis in the evidence. From the ad-

mitted valid finding of the court on this matter, it rationally follows that where the conduct of the trial by the judge is characterized as encouraging new crimes (however identified or unidentified) unless stopped in its tracks, the administration of justice and integrity of the judge are questioned. There is indeed a rational connection between the fact admitted as proved and the ultimate fact presumed on this point. Such a charge would certainly also tend to create disrespect for the courts of justice and judicial officers generally. The courts below so found, and properly so.

As a corollary to her attempt to develop what she meant to say in her Honokaa speech, petitioner assails the "treachery" of the type of evidence that constitutes the record herein. (O.B. 30-31.) She charges that the testimony of the eight witnesses was "fragmentary in the extreme," and "often extracted by prodding and leading questions," and "confined only to the remarks charged in the complaint." (O.B. 30.) She decries the fact that no attempt was made to elicit the full speech or the context of any particular remark and no effort was made "to develop petitioner's statements with any precision." (O.B. 30.)

This complaint directed to the record herein has no basis in fact. However, even assuming *arguendo* that such complaint has some credence, such attack on the record made below is untimely and no grounds for reversal by this Court. *The "Richmond"*, 103 U.S. 540; *The Ship Marcellus*, 1 Black 414. Petitioner was represented by old-time counsel, J. Garner Anthony, Esq., throughout the hearings before the Legal

Ethics Committee. (R. 135, et seq.) She had an opportunity to present her own witnesses from the predominantly ILWU audience at Honokaa. She had an opportunity to contradict, rebut, amplify, or otherwise deal with the testimony of the eight witnesses to prevent it from being fragmentary and confined in scope. (O.B. 30.) She could have "elicited the full speech" or "the context of any particular remark" and developed her statements with the precision she complains was lacking at the time of the committee hearing. (O.B. 30.) Her counsel was present throughout the hearings and engaged in protracted cross-examination of all witnesses. (R. 135, et seq.) Nothing prevented petitioner or her counsel to present witnesses on her behalf. Petitioner, in fact, did call Jack Hall as a witness on her behalf and also testified herself. (R. 427.) But, as the court below found of great significance, she did not produce a single member of the sympathetic and predominantly ILWU audience to confirm her version of the speech. (R. 561.) This is no cause for complaint by petitioner's present counsel against respondent.

Petitioner further had an opportunity to "develop petitioner's statements with any precision" by availing herself of her right to a trial *de novo* before the Supreme Court of the Territory of Hawaii. (O.B. Appendix 83.) Instead, she chose to submit the case to the Supreme Court on the record made before the Legal Ethics Committee. (O.B. 6, R. 113.) Both courts below weighed the evidence and both found the evidence to support the judgment according to law.

In such a case, this Court has followed the rule as expressed in *The Ship Marcellus, supra:*

> "We have had occasion to remark more than once, that, when both courts below have concurred in the decision of questions of fact, . . . parties ought not to expect this court to reverse such a decree, merely by raising a doubt founded on the number or credibility of witnesses. The appellant in such case has all presumptions against him, and the burden of proof cast on him to prove affirmatively some mistake made by the judge below, in the law or in the evidence. It will not do to show that on one theory, supported by some witnesses, a different decree might have been rendered, provided there be sufficient evidence to be found on the record to establish the one that was rendered." *Id.* at 417.

The presumptions in favor of the correctness of the findings and conclusions by the two courts below must be overcome here. It is not enough to show that if petitioner and her witness, Jack Hall, had been believed, the judgment would be wrong. *(The "Richmond," supra.)* Something more than ingenious criticism is necessary to overthrow a judgment in this Court on the ground that it is not supported by the evidence, where the findings have been approved by the two lower courts. *Delaney v. United States,* 263 U.S. 586 (1924). It is not enough, to invalidate findings of fact in which two courts below have concurred, that the evidence permits conflicting inferences. This Court will "decline to subject to minute scrutiny the language employed by these courts in discussing ques-

tions of fact." *Texas & N.O.R. Co. v. Brotherhood of Railway & S.S. Clerks,* 281 U.S. 548, 560 (1930). As stated by Mr. Chief Justice Hughes in that case:

> "Motive is a persuasive interpreter of equivocal conduct, and the petitioners are not entitled to complain because their activities were viewed in the light of manifest interest and purpose. The most that can be said in favor of the petitioners on the questions of fact is that the evidence permits conflicting inferences, and this is not enough." *Id.* at 559-560.

This comment is eminently applicable herein.

This same attitude has been exhibited by this Court toward disciplinary proceedings of attorneys. This Court first determined the duty of the reviewing court in such a matter in *Ex parte Burr,* 22 U.S. 529 (1824). It recognized the delicacy of interposing its authority and declined to do so unless the conduct of the courts below was greatly irregular or flagrantly improper. It follows that it is enough for the purposes of this Court that there is sufficient credible evidence to support the findings of the courts below. State and federal courts have consistently followed this principle. See *e.g., In re Patterson,* 176 F.2d 966 (9 Cir. 1949), *In re Schachne,* 87 F.2d 887 (2 Cir. 1937), *Schoolfield v. Bean,* 26 Tenn. App. 30, 167 S.W.2d 359 (1942), *In re Morganstern,* 61 Cal.App. 702, 215 Pac. 721 (1923). The New York court in *In re Flannery,* 212 N.Y. 610, 106 N.E. 630, 631 (1914), clearly states this proposition of law as applied to disciplinary proceedings:

"The Appellate Division has found the appellant guilty of gross unprofessional conduct and has decreed his disbarment. On this record our power of review is limited to the consideration of the single question whether the finding of guilt has any evidence to sustain it. Matter of Goodman, 199 N.Y. 143, 92 N.E. 211; Matter of Robinson, 209 N.Y. 354, 103 N.E. 160. It is not for us, where the evidence is conflicting, to determine where lies the truth. It is not for us, where opposing inferences may be drawn, to determine which we shall accept and which reject. It is not for us to revise the measure of punishment which guilt, when adjudged, is to entail. In establishing the standard of conduct to which the bar must, at its peril, conform, the Appellate Division has a wide discretion, with which we have neither the wish nor the power to interfere. If the conduct condemned is not wholly blameless, the extent to which it shall be reprobated is not for our determination. We have no right to say, where any measure of blame attaches to the offense, that the standard has been set too high.

"In the light of these guiding principles we have considered this voluminous record, and have reached the conclusion that the evidence sustains the findings. It would serve no useful purpose to follow the course of the proofs and to point out the inferences to be drawn from them. The court below, where conflicting inferences may have been possible, has seen fit, after weighing the evidence, to draw those adverse to the appellant, and to the rectitude of his purposes and motives. Drawing these inferences it has held that his conduct falls short of the standard to which the members of an honorable profession must conform. The

> appellant would have us say that the conduct which the court below has thus condemned is wholly free from blame. We are asked in effect to serve notice on the bar that what was done by the appellant may, with impunity and honor, be done by others. We cannot give that word."

The judgment suspending petitioner for one year is amply supported by convincing evidence as found by the two courts below. It is not arbitrary, not only on the basis of the evidence of record herein, but also on the basis of standards applied in the Territory of Hawaii and in other jurisdictions.

A major portion of the disciplinary proceedings similar in nature to the instant matter and the resulting pronouncements in the case reports of this and other jurisdictions are compiled in the addendum to the opinion of the Supreme Court of the Territory of Hawaii. (R. 123.) A few additional cases not included in said list are cited in the footnotes by petitioner (O.B. 45-46) and in this brief generally. The cases listed in the addendum and incorporated in the opinion of the disciplining court and the resultant disciplinary measures were considered by the court with reference to the petitioner's case. (R. 122.) An impartial study of the circumstances involved and the discipline meted out in the cases listed in said addendum and petitioner's brief indicates beyond question that the judgment in the instant matter was carefully weighed and not motivated by passion or arbitrariness. In fact, the measure of discipline in many cases where an attorney purportedly, under the theory of peti-

tioner, exercised his freedom of expression has been disbarment instead of suspension. See *e.g., Wilhelm's Case,* 269 Pa. 460, 112 Atl. 560 (1921.) It is also interesting to note that the constitutional question of freedom of expression was seldom raised in these disciplinary cases, and when raised, summarily disposed of. See *e.g., In re Cohen,* 261 Mass. 484, 159 N.E. 495 (1928); see also *Wilhelm's Case,* 269 Pa. 460, 112 Atl. 560 (1921); *In re Hanna,* 30 N.M. 96, 227 Pac. 983 (1924).

The disciplinary cases from the Hawaii jurisdiction also demonstrate that the judgment in the instant case is not arbitrary or excessive. The disciplinary court in the addendum to its opinion sets out six Hawaiian disciplinary cases dating from 1885 to 1928 which it definitely considered in arriving at its judgment. (R. 126.)

In the case of *In re Keliikoa and Barenaba,* 5 Haw. 279 (1885), an attorney was disbarred for taking a fee from a "stupid person" and not representing him in court and in taking additional fees for aid and advice which actually injured him. The other attorney was suspended for three months.

In re Paakiki, 8 Haw. 518 (1892), an attorney was suspended for two years for not making careful and specific inquiries, the circumstances being suspicious, which would have led him to ascertain that a deed was a forgery.

In re Humphrey and Thompson, 15 Haw. 155 (1903), graphically illustrates the high standard of conduct which the territorial court requires of its at-

torneys. The court, in that case, expressed the opinion that when an attorney serves a new client against a former client in the same matter in which he represented his former client, the penalty would be disbarment. However, in view of the looseness of the relationship of attorney and client between the attorney concerned and the former client, his youthfulness and his dependence upon the direction of the older attorney and former judge also involved in this case, he was suspended for one year. The older attorney and former judge, who was found to have committed the further gross misconduct of attempting by friendly appeals, threats and promises to induce another attorney involved in the litigation to betray that attorney's aged and credulous client, was disbarred.

It is respectfully submitted, from the foregoing, that arbitrariness in fact-finding and in the disciplinary measures taken is lacking. Petitioner was not singled out for suspension uninsulated from local pressures and personal bitterness. (O.B. 74.) There is convincing evidence of record which rationally justifies the concurrent findings of both courts below.

B. The action of the disciplining court, affirmed by the court below, in suspending petitioner from the practice of law for one year, in the exercise of its statutory and inherent power to insure the dignity and proper function of judicial processes, did not deprive petitioner of her freedom of speech.

Point II of petitioner's opening brief posits the decision below as "a grave infringement upon freedom of speech in an area of great public concern and by a speaker peculiarly fitted to contribute to public understanding." Subsection 1 reiterates what was urged

in Point I, that nothing in the speech involved Judge Wiig. The speech was a "discussion on a generalized plane and with no thrust at the trial judge." (O.B. 50-51.) Respondent readily admits that if the judgments of the courts below were based on petitioner's view of the facts, the fact-finding below was definitely arbitrary. But this point goes full circle again on what petitioner says she said and meant in Honokaa, not what the trier of fact and the courts below found.

Subsections 2 and 3 urge that a lawyer has a right to comment on "pending case because he seeks not to vindicate a client but to alert the public to what is a serious problem, perhaps a public danger" and that he has no duty to remain silent as a "built-in apologist" for the *status quo* in the judicial branch. (O.B. 53.) Petitioner, however, adds that there are two limits to the lawyer's freedom of comment on pending cases: one as indicated by the "clear and present danger" test and the other which grows out of the lawyer's position as such. (O.B. 54-55.) These two limitations are deemed not applicable herein to petitioner.

Subsection 4 urges the "clear and present danger" test upon the conduct of a lawyer. Such test is urged, not as a formulary, but as a "method of evaluation." (O.B. 57.) Petitioner tips the scale in her favor in balancing the interest of public respect and confidence in the courts against that of free public discussion by the lawyer in a pending case. (O.B. 61.) But this balance in favor of petitioner is again based upon her insistence that a lawyer of her stature and record

would not and did not say things which purposefully attacked Judge Wiig or made out a danger to public respect for the courts. (O.B. 60-61.)

Respondent agrees that any lily-white version of petitioner's speech in Honokaa is not subject to discipline. Indeed, there would be no legal problem herein if the courts below had construed petitioner's speech in the same light as she does. But the problem here is whether the disciplinary action of the courts below is contrary to freedom of speech rights asserted by petitioner. Respondent maintains that First Amendment rights are not involved; but if involved, the action of the courts below is firmly and rationally grounded on a substantial record below.

Petitioner further urges that the importance of free and untrammelled public discussion by a lawyer in a pending case overbalances the possible danger to public respect for the courts by such discussion. (O.B. 59.) Again, the vehicle of this balance in her favor is her version, in retrospect, of what she meant to say in Honokaa. Respondent takes no issue with petitioner's advocacy of "fearless, vigorous and effective advocacy" and of a lawyer's service as a tribune to inform the public "when liberty is threatened." (O.B. 63.) Respondent merely asserts the limitations upon the attorney imposed by the canons of the profession and the right of the licensing authority to maintain the dignity of the bench and the bar. Respondent urges that the case at bar merely involves the violation of the canons of ethics by one licensed to practice in the territorial courts and the extent of the right and responsi-

bility of the territorial court in dealing with said violation. The disciplinary action taken violates no freedom of speech right of petitioner. It gives meaning and vitality to the canons of ethics. It is an admirable step in the right direction of keeping the judicial temple clean. (R. 562.)

This Court early set the standard, formalized later in the Canons of Professional Ethics,[10] for the conduct of attorneys in simple and unequivocal terms. As stated in *Bradley v. Fisher,* 13 Wall. 335, 355:

> "... the obligation which attorneys impliedly assume, if they do not by express declaration take upon themselves, when they are admitted to the bar, is not merely to be obedient to the Constitution and laws, but to maintain at all times the respect due to courts of justice and judicial officers. This obligation is not discharged by merely observing the rules of courteous demeanor in open court, but it includes abstaining out of court from all insulting language and offensive conduct toward the judges personally for their judicial acts."

Research has failed to disclose any case in this tribunal involving an assertion of a lawyer's right to

[10]The very first canon in the Canons of Professional Ethics provides: "It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected."

free expression against the disciplinary action of a licensing court which, in effect, stills his voice as an attorney. But cases are legion in the state and lower federal courts. There is universal recognition by these tribunals that freedom of speech guaranteed by the Constitution has its limitations both as to the ordinary citizen and to an officer of the court. As stated by the court in *In re Hilton*, 48 Utah 172, 158 Pac. 691, 696 (1916):

> "*And, as has been repeatedly held, liberty and freedom of speech under the Constitution do not mean the unrestrained right to do and say what one pleases at all times and under all circumstances* (Warren v. U.S., 183 Fed. 721, 106 C.C.A. 156, 33 L.R.A. [N.S.] 800), *and do not license scandal and defamation of courts* (McDougall v. Sheridan, 23 Idaho 191, 128 Pac. 954; Burdett v. Commonwealth, 103 Va. 838, 48 S.E. 878, 68 L.R.A. 251, 106 Am. St. Rep. 916); that it is the use and not the abuse of free speech that is protected, and that every one at all times is responsible for an abuse of the privilege (Diener v. Star-Chronicle Pub. Co., 230 Mo. 613, 132 S.W. 1143, 33 L.R.A. [N.S.] 216); *and that an attorney, guilty of such abuse by slandering or scandalizing or defaming a court or judge, is subject to discipline and disbarment* (Cobb v. U.S., 172 Fed. 641, 96 C.C.A. 477; In re Thatcher, 80 Ohio St. 492, 89 N.E. 39; s.c., 83 Ohio St. 246, 93 N.E. 895, Ann. Cas. 1912A, 810; In re Breen, 30 Nev. 164, 93 Pac. 997; People v. Green, 7 Colo. 237, 3 Pac. 65, 49 Am. Rep. 351). The proposition, supported by cases there cited, is thus put in 2 R.C.L. 1093:
>
> 'Where an attorney indulges in invective or in scandalous innuendo that tends to degrade

the court or to impair its respectability and usefulness, it is the duty of the court to take such steps as may appear to be necessary to preserve its dignity and good name, even to the expulsion of the offender from practicing before it.'

"And, as there further stated, to confer jurisdiction to disbar therefor it is not necessary that the indignity or insult should occur in open court, or constitute a statutory contempt, or be concerning a matter still pending before the court, and that such an offender may be dealt with (page 1098) for acts and misconduct committed in another state. Speaking of the obligation of attorneys, Mr. Justice Field, in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646, well says:

'The obligation which attorneys impliedly assume, if they do not by express declaration take upon themselves, when they are admitted to the bar is not merely to be obedient to the Constitution and laws, but to maintain at all times the respect due to courts of justice and judicial officers. *This obligation is not discharged by merely observing the rules of courteous demeanor in open court, but it includes abstaining out of court from all insulting language and offensive conduct toward the judges personally for their judicial acts.*' " (Emphasis added.)

An attorney, of course, does not, in assuming the important place accorded him in the administration of justice, surrender his right as a citizen to criticize the decisions of the courts in a fair manner. But the right of fair criticism does not carry with it the unbounded liberty to engage in such conduct as to impugn the

integrity of the presiding judge or to create disrespect for the courts and judicial officers. *In re Ades*, 6 F.Supp. 467 (D. Md. 1934).

> "Such conduct, whether during the course of litigation or thereafter, is not only a gross violation of the duty of respect to the courts, but, if permitted to go unrebuked, would tend inevitably to bring the courts and our whole system of administering justice into public disrepute. It has rightly been condemned by all courts that have had occasion to pass upon the question, and has generally been regarded as a ground for suspension or disbarment. Thatcher v. U.S. (C.C.A.) 212 F. 801; United States v. Green (C.C.) 85 F. 857; In re Thatcher, 80 Ohio St. 492, 663, 89 N.E. 39; State v. Breckenridge, 126 Okl. 86, 258 P. 744, 53 A.L.R. 1239; In re Hilton, 48 Utah, 172, 158 P. 691, Ann. Cas. 1918A, 271; People v. Metzen, 291 Ill. 55, 125 N.E. 734; People v. Standidge, 333 Ill. 361, 164 N.E. 844; In re Dunn, 85 Neb. 606, 124 N.W. 120, 130; In re Troy, 43 R.I. 279, 111 A. 723; Matter of Rockmore, 127 App. Div. 499, 111 N.Y.S. 879; Scouten's Appeal, 186 Pa. 270, 40 A. 481; and see further authorities, 53 A.L.R. 1244." *In re Ades*, supra, at 481.

This is not to say that an attorney may not criticize the decisions of a court. But, as aptly put by the court below, an attorney cannot litigate on a given case by day and castigate by night (or at recess) the very court that he is appearing before. (R. 568-569.) That this was a case in progress compounds the mischief of petitioner's attack. More so, since an attorney at law, bestowed with an aura of respectability and

credibility of an officer of the court, is chargeable with a higher standard of behavior and conduct toward the court than a layman. *State Board of Law Examiners v. Spriggs,* 61 Wyo. 70, 155 P.2d 285, 289 (1945).

> "Of all men, none owes a more scrupulous allegiance to law and order than the lawyer. If he advises and encourages disrespect for the courts, and indulges in false statements concerning them, he helps undermine the very government to which he has sworn to be loyal. He thus forgets his obligations, both as a citizen and as a member of the bar. The wrong he does affects not only the courts, but the bar as well." *United States v. Markewich,* 261 Fed. 537, 540 (1919).

That the constitutional freedom of speech of an attorney at law does not protect him from his obligation to maintain respect for judicial tribunals is well expressed in *In re Breen,* 30 Nev. 164, 93 Pac. 997, 1000 (1908):

> "The right of free speech is one of the greatest guaranties to liberty in a free country like this, even though that right is frequently and in many instances outrageously abused. Of scarcely less, if not of equal, importance, is the maintenance of respect for the judicial tribunals, which are the arbiters of questions involving the lives, liberties, and property of the people. The duty and power is imposed upon the courts to protect their good name against illfounded and unwarranted attack, the effect of which would be to bring the court unjustly into public contempt and ridicule, and thus impair the respect due to its authority. While it is the duty of all to protect the courts against

unwarranted attack, that duty and obligation rests especially upon the members of the bar and other officers of the court."

It is obvious that "membership in the bar is a privilege burdened with conditions." *In re Opinion of the Justices,* 279 Mass. 607, 180 N.E. 725 (1932); *In re Cohen,* 261 Mass. 484, 159 N.E. 495 (1928); *People ex rel. Karlen v. Culkin,* 248 N.Y. 465, 162 N.E. 487 (1928); *Matter of Rouss,* 221 N.Y. 81, 116 N.E. 782 (1917). In the *Cohen* case, *supra,* it was contended that a limitation upon the right of an attorney to advertise for business was a denial of his constitutional freedom of press, just as petitioner here is contending that a limitation upon her right to say what she said in Honokaa was a denial of the constitutional freedom of speech. The court in the *Cohen* case disposed of such contention thusly:

"The arguments of the respondent founded chiefly upon freedom of the press seem to us quite wide of the mark. Conditions may limit the exercise of constitutional rights. McAuliffe v. Mayor & Aldermen of New Bedford, 155 Mass. 216, 220, 29 N.E. 517. Whatever may be his constitutional rights, a member of the bar must conduct himself as an officer of the court in such manner as not to offend against reasonable rules of propriety established by the court for the general welfare. Courts are solicitous for the rights of one duly admitted to practice law. Matter of Sleeper, 251 Mass. 6, 18, 19, 146 N.E. 269. They owe an equal duty to see to it that the public interests are conserved by observance on the part of lawyers of proprieties indicative of a due appreciation of

> their responsibilities to the court and to the community, even though purely selfish tendencies and profit may be thereby restrained. No constitutional liberty of the attorney at law is infringed by the enforcement of the rule of professional conduct observed by the court in the case at bar." *Id.* at 497.

While the code of legal ethics which most jurisdictions formally or informally adopt has no statutory force, it illuminates the views entertained by the bench and bar concerning the proper conduct of attorneys. *State Board of Law Examiners v. Spriggs,* 61 Wyo. 70, 155 P. 2d 285 (1945). It might be pointed out that Canon 1 of the Canons of Professional Ethics as adopted by the Supreme Court of Hawaii spells out the duty of the lawyer to the courts. Canon 16 of said Canons deals with the duty of the lawyers to restrain clients from improprieties. Canon 20 condemns newspaper publications by a lawyer as to pending or anticipated litigation. These canons on their face are indicative of the fact that the right to practice law, like many of our democratic rights, is burdened with conditions, and the freedom of action and expression of an attorney towards the courts and judges is not as unbridled as that of a layman.

This Court in *Theard v. United States,* 354 U.S. 278, decided on June 17, 1957, reaffirmed the oft-stated rule adopted in the courts below—that membership in the bar is a privilege burdened with conditions. Liberty and freedom of speech under the Constitution do not mean the unrestrained right to do and say

what one pleases at all times and under all circumstances. They do not license scandal and defamation of courts. One of the fundamental duties of an attorney, clearly set forth in the first canon of professional ethics of the American Bar Association adopted by the Territorial Supreme Court and early recognized by this Court, is to maintain a proper respect for courts of justice and judicial officers. *Bradley v. Fisher*, 13 Wall. 335. And such respect does not create a "built-in apologist" for the judiciary.

Imposition of the clear and present danger test of *Bridges, Pennekamp,* and *Craig* upon the conduct of an attorney would nullify this very first and important canon of ethics by which all attorneys are bound. The rejection of the clear and present danger test by the court below can be deemed improper only if this Court is willing to emasculate the basic duty of the lawyer to the courts which this canon enunciates. But this Court has indicated in *Theard* that a lawyer is bound by reasonable rules of court and his conduct cannot be as unbridled as that of a layman's:

> ". . . The court's control over a lawyer's professional life derives from his relation to the responsibilities of a court. The matter was compendiously put by Mr. Justice Cardozo, while Chief Judge of the New York Court of Appeals. '"Membership in the bar is a privilege burdened with conditions" (*Matter of Rouss,* [221 N.Y. 81, 84, 116 N.E. 782, 783]). The appellant was received into that ancient fellowship for something more than private gain. He became an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice.' *People*

> *ex rel. Karlin v. Culkin,* 248 N.Y. 465, 470-471, 162 N.E. 487, 489. The power of disbarment is necessary for the protection of the public in order to strip a man of the implied representation by courts that a man who is allowed to hold himself out to practice before them is in 'good standing' so to do." *Theard v. United States,* 354 U.S. 278, 281.

This tribunal has also made it clear that it will unhesitatingly protect counsel in fearless, vigorous and effective performance of advocacy on behalf of all persons though identified with unpopular causes. "But it will not equate contempt with courage or insults with independence. It will also protect the processes of orderly trial, which is the supreme object of the lawyer's calling." *Sacher v. United States,* 343 U.S. 1, 13-14. It is interesting to note that the majority and dissenting opinions did not allude in *Sacher* to the freedom of speech of the attorney-appellant therein and the clear and present danger test urged herein.

Fisher v. Pace, 336 U.S. 155 (1949), involved an attorney who exceeded the bounds of permissible arguments to the jury and who persisted in arguing the points held inadmissible, despite the court's admonitions. To follow the First Amendment argument of petitioner herein to its utmost logical and under such circumstances would be to lead to the conclusion that First Amendment rights were involved as to invoke the clear and present danger rule. But this Court saw "nothing in their [Texas Supreme Court's] opinion or conclusion that indicates any disregard of peti-

tioner's rights." *Id.* at 162. It quoted with approval, the state supreme court's opinion that the trial judge's rulings are subject to review in the appellate courts, but the trial judge has the power to make such rulings, right or wrong. ". . . 'If they are erroneous the injured party has the plain, simple and adequate remedy of appeal. It was thus the duty of counsel to abide by his decisions even if erroneous; and if any rights of his clients were violated the remedy was by exception and appeal. Any other procedure would result in mockery of our trial courts and would destroy every concept of orderly process in the administration of justice.' " *Id.* at 162. The constitutional protection of free speech was never in issue.

Petitioner, in the instant case, would be bound by the same restraints approved by this Court in *Fisher.* The courtroom, as stated by the majority below, during the progress of a trial, is the only proper forum for a lawyer to vindicate his clients. (R. 562.) Whether it be to the face of the judge personally in open court or before a public gathering eager to hear about a trial in progress, petitioner's speech is censurable and actionable conduct.

And such restraint against petitioner is proper without reference to any constitutional right. The power to discipline an attorney is incidental to the local court for the maintenance of the respectability of the bar and preservation of its harmony with the bench. *Ex parte Burr,* 9 Wheat. 529. This Court recognized this important status of a local court in determining the fitness of an attorney to remain a member

of such local court in *Selling v. Radford,* 243 U.S. 46. In that case, this Court chose to permit the respondent to file the records of the state court (the Michigan Supreme Court which disbarred him from practice in Michigan for professional misconduct) to point out any ground, within the limitations set, which would prevent this Court from giving effect to the conclusions of the state court to disbar respondent from the Bar of this Court. This Court viewed the conclusions of the state court to be controlling as far as the respondent's disbarment from practice in the state court was concerned. It recognized the absence of fair private and professional character inherently arising as the result of the action of the state court, subject only to certain limitations, as far as respondent's disbarment from practice in this Court was concerned. The filing of the state court record was permitted, not to question the validity of the state court's conclusions which led to disbarment from state court practice. It was permitted only to determine the basis for disbarment from practice before this Court. See also *In re Isserman,* 345 U.S. 286, 348 U.S. 1.

Most recently in *Theard,* this Court recognized the sanctity of local state disbarment proceedings. As stated in *Theard,* "It is not for this Court, except within the narrow limits for review open to this Court, as recently canvassed in *Konigsberg v. State Bar,* 353 U.S. 252, and *Schware v. Board of Bar Examiners,* 353 U.S. 232, to sit in judgment on Louisiana disbarments, and we are not in any event sitting in review of the Louisiana judgment." *Id.* at 281. The narrow

limits for review involved in *Konigsberg* and *Schware* do not encompass the case at bar.

The standards imposed by the courts below are not as "protean" as petitioner suggests. (O.B. 58.) The restraints are against attacks which impugn the integrity of a presiding judge and against such unjust criticism and clamor which create disrespect for the courts of justice and judicial officers. The restraints are not restraints designed to "import a relationship of subordination and consequent loyalty . . . which is wholly incompatible with an independent bar." (O.B. 58.) They have no "real roots in 'atmospheric considerations' generated by her representation of the Smith Act defendants." (Amicus Br., 5) nor are they restraints directed arbitrarily upon one "who has courageously represented the underdogs in a semi-colonial society." (Amicus Br., 5.) They are merely in consonance with the first canon of ethics. They simply echo the restraints which all members of the legal profession have honored from the time of Mr. Chief Justice Marshall and Mr. Burr.

C. The holding of the disciplining court, affirmed by the court below, that petitioner's repeated interviews with and interrogations of the juror, Fuller, was gross misconduct is supported by the evidence and by applicable law.

Paragraph III of the complaint of the Bar Association of Hawaii, *inter alia,* charged that the petitioner did "shortly after rendition of a verdict therein visit a juror who was known by her to be indisposed, and thereafter submitted her affidavit concerning an interview with said juror to the presiding judge under

circumstances indicating a failure to comply with standards of professional conduct required of practitioners of law licensed to practice before this Court." (R. 4.)

This charge is amply supported by the evidence adduced during the hearings below.[11] The record pictures a spectacle of petitioner, with her client, Jack Hall, Joseph Kealalio, president of the I.L.W.U., and Grace Oshiro, an I.L.W.U. steward, together with Ellen Cabreros, an I.L.W.U. member, in tow, harassing an admitted "gravely ill" man (R. 39) with searching and pointed examinations on three consecutive days. (R. 39, 42, 46.) Scrutiny of petitioner's affidavit and the testimony of record not only affirms the charge of the Committee but also sustains the finding of the lower courts that petitioner grossly misconducted herself. While some of the evidence and testimony are conflicting, a convincing showing is made that petitioner did resort to studied inquiries and searching examination of juror Fuller, despite his then condition.

Her affidavit, on its face, reveals this fact. Her affidavit, made under oath, indicates that this juror who had to be quieted down and put to bed by his wife and Jack Hall on the day he was interrogated (R. 45), gave a lucid, organized running account of everything that purportedly happened in the jury

[11] Respondent is in accord with the court below that in the event the punishment on the Honokaa speech charge is reversed, the juror charge should be referred back to the territorial court to determine the sanction to be applied. (R. 568.)

room. According to petitioner, this juror said that (1) he believed he had to vote guilty to protect his brothers' jobs (R. 43); (2) it wasn't right to look at the government's exhibits and not at defendants' (R. 43); (3) it was a frame-up and he blamed himself (R. 43); (4) the jurors never got around to looking at defense exhibits (R. 43); (5) he knew and believed defendants were innocent all the time but was afraid of what would happen if he voted not guilty (R. 43); (6) the jury decided that the Communist Party was a conspiracy within the first hour of deliberations (R. 43).

(7) They used a certain instruction of the judge with reference to a conspiracy (R. 43); (8) he knew from what he heard that the defendants were convicted before the case started (R. 43-44); (9) he heard two jurors tell the judge they were opposed to Communism during the examination (R. 44); (10) no secret ballots were taken (R. 44); (11) some jurors said the government wouldn't bring the charge if it were not true (R. 44); (12) he heard it said that if the defendants weren't convicted it would affect Hawaii's statehood chances (R. 44); (13) jurors on the side of the government said any member of the Communist Party must know its purposes and is guilty (R. 44); (14) jurors on the defense side asked for Kawano's testimony (R. 44);

(15), one juror said "a number of times" that he had to go to the mainland and that they should get it over with (R. 44); (16) if he voted for the defendants it would hurt his family (R. 44); (17) one of

the jurors played cards in the jury room (R. 44); (18) there was anger and shouting in the jury room (R. 44); (19) prosecution jurors got angry with those who were holding out (R. 44); (20) no secret ballot was taken, but anybody on the defendants' side had to speak up and the others would "try to get them to back down" (R. 45); (21) jurors talked about Attorney Gladstein and said he was too smart and had defended Communists in New York, and had served a jail sentence (R. 45); (22) some jurors talked about the war against Communism (R. 45);

(23) jurors didn't consider the character evidence for the defendants (R. 45); (24) the second thing decided was that all defendants were members of the Communist Party (R. 45); (25) the next thing decided was that if they were Communists they must have intended to overthrow the government (R. 45); (26) he, himself, did not believe Kawano and he heard others say they did not believe Muller (R. 45); (27) he heard jurors talk about sabotage and espionage (R. 45); (28) they used a certain instruction on whether there was a conspiracy and they decided "right off" that there was (R. 45); (29) they talked about whether defendants were members of the Communist Party (R. 45); and (30) there was a lot of talk about Bailey. (R. 45.)

This detailed listing of all of the purported statements of this admittedly "gravely ill" (R. 39), "emotionally disturbed" (R. 423), "disoriented" (R. 259), and "mentally disturbed" (R. 262) juror glaringly illuminates some critical points. It seems incredible

that this logical and carefully thought-out story fell from the lips of this sick juror whose voice "was still only a whisper" (R. 38). It lends credence to the lack of compliance with standards of professional conduct in the circumstances.

Taking the affidavit on its face, it sems odd that the word "frame-up" allegedly uttered by the juror Fuller was never mentioned in petitioner's affidavit. Much of the argument and excuse for petitioner's presence at the Fuller home and her so-called investigation to protect her client and the court (O.B. 65) is based on the purported utterance of the word "frame-up" by the sick juror. Petitioner sought to establish that the word "frame-up" was uttered by the juror himself. Her two I.L.W.U. witnesses, Ellen Cabreros and Grace Oshiro, strove mightily to put this word into the juror's mouth, but with confusing and evasive references to having heard it yelled and/or whispered (R. 332-333, 350, 372-374, 379-380). Jack Hall did not at any time remember that the word "frame-up" was ever used by the juror. (R. 385-426.) Petitioner herself tried first to establish that the juror's wife told her that the juror said "frame-up" and then said that she herself heard him say "frame-up." (R. 476-477.) Yet, when reminded that such an important word was lacking in her affidavit, she made a feeble explanation of this oversight. (R. 477-478.) We submit that the argument, again in retrospect, that information of a "frame-up" sent petitioner, with her entourage of I.L.W.U. personnel, scurrying to the Fuller home takes on a hollow ring. Even, assuming

the truth of the affidavit, it lends added weight to the finding of the disciplining court that petitioner made repeated visits and studied interrogation of the sick juror under the circumstances as set forth in her affidavit, contrary to *Rakes v. United States,* 169 F.2d 739 (4 Cir. 1948) and other related cases.[12]

The testimony of Jack Hall, petitioner's client in the *Fujimoto* case, supports the finding of the disciplining court that the *Rakes* rule was violated. He testified that "We would ask him [Juror Fuller] a question, or I would ask one or Mrs. Bouslog would ask one, and he would think a long time and very faintly give us replies, practically in a whisper" (R. 415); that he and petitioner questioned the juror about "half-half. We were developing a particular subject, and she would ask a question and I might ask another one along the same general lines, and he volunteered a few things from time to time." (R. 416); that they questioned the juror about everything because he was "firmly convinced that the jury wasn't considering the evidence in the case nor following the instructions of the judge; otherwise, they would have been out a much longer period of time. I felt that there were persons within that jury that were anxious to get it over with and didn't care about the evidence, and I wanted to see if I could be supported." (R. 416); that the juror "talked more in response to questions than volunteering information. We were

[12]The other point raised by petitioner that the conduct here occurred in a federal case in a federal court and that this is no local matter for the local court and bar (O.B. 65) is answered in Point II, *supra.*

trying to refresh his memory." (R. 417); that most of the answers and information the juror gave were in response to questions put by either petitioner or Hall and that when the juror "would sit silent for awhile we would ask him about a particular matter." (R. 418.) Apparently, all that appears in petitioner's affidavit is not the complete extent of the "information" elicited from the sick juror since Mr. Hall testified that he and petitioner asked the juror "questions, I'm sure, that don't appear in the affidavit." (R. 422.) This foregoing testimony of record shows that petitioner, in conjunction with her client, engaged in a searching and pointed interrogation of a juror who obviously was in a poor mental and physical state.[13] (R. 422.)

The ruling of the courts below is grounded in sound law. As stated in the *Rakes* case, *supra*, "The inviolability of the jury room from outside influence of any sort, actual or potential, is a prime necessity in the administration of justice." *Id.* at 745. The courts below properly condemned the "searching" and "pointed" examination of the sick juror herein. Interviews of jurors even to discover what was the course of deliberation of a trial jury are also properly condemned. *Northern Pacific Railway Company v.*

[13]Note also the curious way in which petitioner and Jack Hall were brought into the Fuller incident, according to the testimony of Ellen Cabreros, an I.L.W.U. shop steward and sister of the juror Fuller whose visit to her brother's house was the first in one or two years. (R. 330, 334-339, 352-354.) Note also the finding of the Ethics Committee that petitioner "did not fully disclose to the Court the condition of Mr. Fuller, nor the fact that she had attempted to get affidavits from Mrs. Fuller, who refused to sign one, and could not get an affidavit from Mr. Fuller because of his condition." (R. 15, 495-504.)

Mely, 219 F.2d 199 (9 Cir. 1954); See Canon 23, American Bar Association Canons of Professional Ethics.

This Court has dealt with the conflicting considerations between redressing the injury of a private litigant and inflicting grave injury to the jury system by permitting a post verdict invasion of the jury room. Better considerations favor the general rule of preventing such invasion. As stated by this Court in *McDonald v. Pless,* 238 U.S. 264, 267:

> "But though Rev. Stats. § 914, does not make the North Carolina decisions controlling in the Federal court held in that State, we recognize the same public policy which has been declared by that court by those in England and most of the American States. For while by statute in a few jurisdictions, and by decisions in others, the affidavit of a juror may be received to prove the misconduct of himself and his fellows, the weight of authority is that a juror cannot impeach his own verdict. The rule is based upon controlling considerations of a public policy which in these cases chooses the lesser of two evils. When the affidavit of a juror, as to the misconduct of himself or the other members of the jury, is made the basis of a motion for a new trial the court must choose between redressing the injury of the private litigant and inflicting the public injury which would result if jurors were permitted to testify as to what had happened in the jury room."

The distinction between "overt acts" and "personal consciousness" in determining the applicability of the general rule against impeachment of verdicts by

jurors urged by petitioner is not supported by the later pronouncements of this Court (O.B. 66). Petitioner cites *Hyde v. United States,* 225 U.S. 347 and *McDonald v. Pless,* 238 U.S. 264 for the proposition that the general rule against such impeachment is applied only to matters pertaining to the juror's "personal consciousness" or "thought processes" but not to "overt acts." *Hyde* involved jurors allegedly making an agreement to exchange the conviction of one defendant for the acquittal of another and vice versa. *McDonald* allegedly involved a definitely overt act of arriving at a money verdict by having each juror write down what he thought plaintiffs should recover and dividing the aggregate by 12 and awarding the quotient to the plaintiffs. Clearly, this attempted distinction is unfeasible. The salutary public policy buttressing the rulings of *Rakes* and *Mely* cannot and should not be distinguished on this basis. The all-pervading and historic consideration herein is the preservation of the jurors' privilege to return a verdict freely according to their conscience. Cf. *Clark v. United States,* 289 U.S. 1. Truly, it is incumbent upon the courts to protect jurors from the "studied inquiries" and "searching or pointed examination" such as petitioner engaged in; more so, in view of the physical and mental condition of the juror which was obviously apparent to petitioner. This was not, as petitioner now defends, an inquiry into Juror Fuller's mental imbalance while serving as a juror. (O.B. 67-68.) It was interrogation and examination of the type that can justly be condemned as gross misconduct.

The admissibility or inadmissibility of the facts gathered is not in question here. It is the misconduct of petitioner which was the sole basis of the holding below. And such holding, it is submitted, is supported by the evidence and is premised on sound law.

CONCLUSION.

Upon the foregoing, it is respectfully submitted that the judgments of the courts below should be affirmed.

Respectfully submitted,

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(Appendix Follows.)

Fear

"The only thing we have to fear is fear itself - nameless, unreasoning, unjustified terror which paralyzes needed efforts to convert retreat into advance."

Franklin D. Roosevelt

Published by

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION

HONOLULU, HAWAII

Foreword

Labor Attorney, Harriet Bouslog Sawyer was guest speaker to Kauai union members and their friends on Labor Day of this year. Her theme was the inherent right of the American people to disagree with the policies of government.

The liberty of all people is in jeopardy, she pointed out, when any segment of society is prosecuted and jailed for expressing opinions. Those who are loosing their liberty today under the Smith Act are being persecuted for exercising their rights "to criticize, to dissent, to hold unpopular ideas." The Labor Day speaker did not approve or disapprove of the ideas expressed by those who have been arrested under the Smith Act. Again and again she emphasized, that the issue today is not what is advocated, but rather the right to advocate.

If today people holding unpopular political ideas are jailed, then, the labor attorney pointed out, no section of society can escape for long.

She made a blistering attack on the National Administration and quoted from a recent edition of Look Magazine, in which a feature story brands the Truman Supreme Court as being "incompetent, indolent and irresponsible."

The International Longshoremen's & Warehousemen's Union reprints the 1951 Labor Day address of Harriet Bouslog Sawyer as a public service; as a warning to all people in Hawaii that it is later than some people think.

Mrs. Harriet Bouslog Sawyer

Brothers and Sisters:

On this Labor Day, September 1951, the rights, the living standards, and the hopes of all of you, for yourselves and your children, are in danger. The seriousness of this danger was made clear to all of us by the arrest, on August 28, of seven persons, all of whom are known to us personally or by reputation.

The attack upon the liberties of all working people and true democrats did not, however, begin with the arrest of these seven. It is a course and policy that has been followed by our government since the death of Franklin D. Roosevelt. These seven are a part of a whole national pattern which shows that the people in power in our country today will not tolerate any criticism or attack upon their announced plan to make America and the world an armed camp. As a part of this plan, they have frozen wages while prices and profits soar. They have tried to infect all of us with hate and fear.

Among the group of seven who are charged with conspiring to advocate and to teach the overthrow of the government by force and violence is Jack Hall. All the people of Hawaii know his record. All workers in Hawaii and all honest persons know that he has devoted his life wholeheartedly to helping labor during the whole time he has lived in Hawaii, since 1935.

Few Against Many

At first, he and a handful of others struggled alone to organize unions against the powerful opposition of the Big 5, who did not hesitate in their struggle to use all arms of government—police, the legislature, and the courts—to interfere with every attempt to organize a successful union.

You remember him when his powerful voice was raised in the Voice of Labor and Kauai Herald against the oppression of workers in Hawaii. That was in the days when you were earning less than two dollars a day for your toil—the days you had to take chickens to the lunas to be sure to keep your job. There is not in Hawaii today a worker, a luna, a businessman whose standard of living and human dignity is not greater because of him.

It is not hard for any of us to figure out why Jack Hall is hated by employers in Hawaii, and by politicians in Hawaii. It is more difficult, perhaps, for us to understand why it is that representatives of the government of the United States brand a man, who has contributed so much to bringing the dignity of a human being to the workers of Hawaii, "one of the 63 most dangerous persons" in the United States.

Democracy in Action

All of us know that the trade union movement, the ILWU, in Hawaii brought democracy to the workers in Hawaii for the first time.

Whenever I think of democracy, I think of a meeting I attended at Lahaina, Maui, in November 1946 at the end of the 79-day sugar strike. The meeting was to consider whether the Lahaina unit would go back to work under the agreement reached as to the other units, while the Pioneer Mill Company refused to re-employ eleven of the Lahaina strike leaders who had been charged with unlawful assembly and riot.

There were 600 to 700 people at that meeting. They were people who had been through 79 days of strike. They were people whose children needed shoes and clothes and food.

Everything said at the meeting was translated into three languages. No less than 40 or 50 people spoke. To a man, those union members voted to refuse to return to work until those eleven men were guaranteed reinstatement without discrimination.

Standing beside me at this meeting was a person who had lived in Maui County and in Hawaii for most of his life. The tears rolled down his cheeks. He said: "That's the first time I ever saw democracy at work in Hawaii."

You and I and all of us know that the union for the first time brought real democracy to the islands in the daily working lives of the people. You have never been taken in by the newspaper and employer accusations that a handful of men run this union, because you yourself have participated in the making of union policy and decisions. It took the united action of 20,000 working people to win the sugar strike.

The Plot Begins

How does it happen, then, that the government of the United States calls a man who has contributed so much to bringing democracy to Hawaii, a dangerous person?

The plot began right here in Hawaii with the red-baiting and cries of communism against labor by employers and the local press, by those who feared statehood. It was built into a fire of frenzy by politicians who betrayed the workers who put them in office. The ILWU-hating governor, Stainback, who smeared the working people of Hawaii in the nation's capital and through the nation's headlines in order to keep himself in office, fanned the flame to white heat. Gasoline was poured on the fire by the IMUAs, the Kauhanes, the Sylva Committee, the Butlers, the Un-American Committee. Then along came disgruntled, ex-labor leaders, the Izukas and the

Kawanos, spurred on by hypocritical politicians who wooed labor's support with sweet words to get in office, and who stabbed labor in the back when they thought it was to their personal advantage.

With the fires already lit and burning brightly, the national administration could not resist seizing upon the prosecution of Hawaii's seven as the next step in building up national hysteria and fear. Hawaii is a natural for such a purpose. Here, World War II started with the Japanese attack on Pearl Harbor. It is the jumping-off place for troops in Korea. A charge of spies and subversives in Hawaii, the national frontier, is a cinch to frighten even peace-loving people not yet stampeded into hysteria and fear.

Most Americans know so little of Hawaii. Mainlanders do not know and most likely never heard of any of the seven. No one on the mainland could catch the lies, no matter how big. It is our job to make all Americans know that these seven are persons of integrity and honor; that any conspiracy is a conspiracy against them and us.

Conform or Else

The prosecutions come about because Jack Hall and persons like him throughout the United States, have dared, individually and as trade unionists, to criticize the policies of government.

The reason for the prosecution of Jack Hall is the same as that for the prosecution of Harry Bridges; of Henry Schmidt; of Bob Robertson. If these attempts succeed prosecution of all militant trade unionists will follow, until the government silences all who dare to challenge the right of the government to freeze wages, while prices and profits soar; who demand peace when the government is bent on war.

The government, in order to carry out its policies, must have something—some means of building up hysteria and fear and an acceptance by the people of the idea of living in an armed camp for the next several generations.

Thus, the government has, in a deliberate and long-standing policy, built up a bogey-man in the United States, of reds and Communism.

But something had to be done to those people who refused to be stampeded. Criticism had to be silenced in all its forms, and so a campaign of fear was instituted—fear of job security, if any criticism were made—fear of arrest—fear of prosecution—fear of speaking out and speaking one's mind.

Franklin Roosevelt once said: "We have nothing to fear except fear itself." We can now realize the great wisdom of Roosevelt—now that our country is ridden and haunted with fear in all places, high and low.—

The elected representatives of the people in power today were elected because they shouted loud and long, as they stumped the country, of their great love for the working man. They promised him repeal of the Taft-Hartley law, low-cost housing, a national health act. They promised to defend the peace of the world. They promised a civil rights program to stamp out vicious racism and discrimination. Not one of their promises have they kept. Instead, they have given the same workers who elected them wages freezes while they admit inflation is out of hand. They have involved us in war, not as provided in the Constitution by declaration of Congress. One man, President Truman, threw us into war. In direct violation of the Constitution, our sons have fought and died on the battlefields of Korea.

Unlawful Lawmen

The FBI has been one of the chief tools in carrying out this program of fear and hate. Its tactics are more appropriate for a thought-police in an undemocratic state than an agency whose primary function is supposed to be to detect violations of federal law. This agency, with the knowledge of the President, the Attorney General, and the Congress, defies federal law and constitutional rights. It collects rumor and scuttlebutt which is used to fire workers. The nature of its reports, when revealed in cases in the federal court, shocked the nation.

We know of the unlawful conduct of the FBI here in Hawaii. We know and can prove that they have placed dictaphones in homes, have unlawfully tapped telephones, have seized personal books and papers without search warrants, have used threats and intimidation against persons who have refused to become stool-pigeons and informers. We can and will prove these things.

First, with the help of the FBI, the administration directed its campaign of fear and intimidation against government workers, then towards unpopular political groups, then towards trade unions, and now it attacks all who oppose it. The present administration is rotten and corrupt with bribery and gangsterism, according to government reports. The trusts become larger and larger, but are not prosecuted. Civil rights act violations are ignored.

The administration just has to keep beating the drums of hysteria to keep attention away from itself. It is like the thief running down the street, pointing and crying "thief." The only time great freedoms and constitutional rights are remembered is when the president and his cronies cry out with injured innocence when jackals like Senator McCarthy use against them their own weapons of the big lie and the red smear.

Let us look at the technique of these prosecutions. It closely follows the fascist technique.

In the year 1945, in the case of the Communist, William Schneiderman, the U. S. Supreme Court said that it found no evidence sufficient to find that the Communist Party advocates the violent overthrow of the government of the United States. It further said that an American Communist like William Schneiderman could be devoted to the Constitution of the United States. Clearly, a court composed of men who believed this did not fit into the plans of the administration. So, as justices died or retired, they were replaced with men with wholly different views. Five years later, the Supreme Court packed with Truman appointees, reached the opposite conclusion and upheld the conviction of the eleven Communists.

Incompetent, Indolent, Irresponsible

Here is what Fred Rodell, Professor of Law at Yale University, says of the present court, in the July 31st issue of Look Magazine. I quote:

"The Supreme Court of the United States today belies its awe-inspiring title. Degraded by President Truman's devil-may-care appointment of four justices whose work has ranged from mediocre to miserable, the Court has sunk to its lowest point in a hundred years.

"When Truman chose Harold H. Burton, Fred M. Vinson, Tom C. Clark and Sherman Minton, it was clear that their major qualification for the nation's top judicial jobs was that they were old cronies of the President. Today, it is clear that a nine-man Court weighed down by so sad a quartet either cannot or will not properly perform its high function . . . the Truman-Vinson Court, judged both by the quantity of work it takes on and by the quality of its work has branded

itself, conservatism aside—as incompetent, indolent and irresponsible."

The Attorney General, empowered by Congress, makes up a black list, perhaps I should say "red list." For belonging to organizations on this list, a worker in government, on the ships, on the waterfront and sometimes, where there is no union contract in private employment, can be and most frequently is fired. The organizations on this black list are not given a hearing or a trial; they are not informed of charges against them. In direct violation of the Constitution and the Bill of Rights, this has been the practice of our government during this terrible era.

First the government says the Communist Party advocates the overthrow of the government, by force and violence. Congress passes laws saying the Communist Party does. The radio, the press and the politicians shout it from the housetops, so loud and long that no one listens to the denials. Everyone is even afraid to disagree with the government. If a person says he does not think the government is right, if he points to a decision of courts, or anything that is in conflict with what the government has announced, he too is branded red by the mere fact that he disagrees. He may even be fired as a fellow-traveler or communist sympathizer, or a poor security risk, if he does not say repeatedly over and over that the Communist Party is subversive and its members should all be behind bars. Keeping his mouth shut and keeping his ideas to himself is not enough.

Every person convicted under the Smith Act has flatly denied that he believes in or advocates the violent overthrow of the government. He points to the Constitution of the Communist Party, which says the achievement of socialism by lawful and peaceful means is the objective.

They Promised — But They,

Repeal Of Taft Hartley!

But

Used Taft Hartley To Break Strikes And Weaken Unions.

Peace

But

War

Low Cost Housing

But

Wrecked Rent Control!

How does the government, in the legal hanging technique, prove its point? Here is where the stoolpigeon, the professional witness, the political opportunist, the renegade, the Izukas, the Kawanos, come in. They announce that they were once Communists, and that when they were Communists, they were terrible people who engaged in all sorts of illegal activity, but now that they have seen the light, they would like to help the government put behind bars all their former associates whom they now hate. They are paid with publicity, with witness fees, with royalties from their books and pamphlets. One of these stoolpigeon-informers, Mr. Izuka, once testified that he directed a slow-down at Port Allen to hold up lend lease ships. No lend lease ship ever docked on Kauai, but no lie is too big for these stoolpigeons or the government prosecutors.

There is no way of proving what ideas a man has in his head except as he tells them. Even after a man is dead, an autopsy on his brain doesn't reveal what he once thought.

A story illustrates the point. Once in contract negotiations, a business agent was accused of being a Communist. He denied it. Then the employer who accused him scoffed and said a Communist always denies being a Communist. The business agent then accused the employer of being a Communist. The employer angrily denied it. "By your own logic," said the business agent, "You have just proved that you are a Communist."

The story trade unionists like best, however, is the story of the picket who was attacked by a cop. To stop the cop from hitting him over the head, the picket cried out, "But I'm an anti-Communist." "I don't care what kind of a Communist you are," the cop said, as he kept on using his club.

After the government's campaign to force everyone to believe that Communists are subversive was in high gear and everyone who disagreed almost was afraid to say so, the government started its prosecutions of Communists and trade unionists accused of being Communists. It didn't make any difference, by this time, what the accused Communist said. Everyone was afraid to listen to what he said. Judges, to stay in favor and to be promoted, join in the witch hunt. Jurors are afraid to disagree because they too might be branded as red. Thus the political trial—the witch hunt 1951 style—has been perfected.

Trade unions and working people all over the country and in Hawaii are the last to give in to hysteria because of their long experience of being red-baited every time they ask for more pork chops.

But certain so-called labor leaders went along with the

hysteria built up by the government, and the house of labor was divided. We are therefore in the darkest days of our hysteria, because we do not have one united trade union movement to oppose the fear, hate and war campaign of the government.

Silence the Opposition

In addition to the trade unions, the government finds it necessary to attack and brand as subversive newspapers which dare to speak out in critical terms of its policies.

I don't suppose there are many people here who have not read the Honolulu Record. We all know that the Record filled a need in Hawaii. What the people of Hawaii need, really, is a daily newspaper with honest reporting of facts, but the best the Territory has been able to achieve is the weekly newspaper, the Honolulu Record.

Freedom of press in this country has become a matter of having one million dollars to start a newspaper. The people who really believe in honest reporting so that people would have the facts, don't have that kind of money.

Two of these seven defendants are employed by the Honolulu Record. One, Koji Ariyoshi, advised the U. S. District Court that he was the managing editor of the Honolulu Record; that his salary was $200 a month; that he had no cash on hand except the $20 he had given his wife upon arrest.

Koji Ariyoshi was born in Hawaii, on the Big Island. He was raised on a coffee farm. His parents had been sugar workers in the days of brutal treatment of workers before there were unions. He served five years in the United States Army in the Intelligence Unit. He is considered even by the commercial newspapers in Hawaii a newspaperman of outstanding ability.

He is a product of Hawaii. He voluntarily chose to edit a newspaper which presented the truth, for $200 a month, rather than to work where he would have to go against his ideas at double or triple his present salary.

Yet, the Attorney General of the United States describes this man, who engages in the publication of a newspaper, as "one of the 63 most dangerous" persons in the United States.

Likewise, Jack Kimoto, who, as an employee of the Honolulu Record, makes $170 a month, is called "one of the 63 most dangerous" people in the United States. He, too, is a product of Hawaii, and a long-time local newspaperman. Physically unable to serve in the Army, he served his country in the OWI as translator and Japanese language broadcaster.

What happens to the Bill of Rights when the government of the United States charges in an indictment that publishing and circulating a newspaper containing reports of facts and editorial comment, is a part of a conspiracy to overthrow the government?

The Honolulu Record is given the use of the U. S. mails. It is sold on news stands. It is a strange charge of conspiracy that is based upon the publication of a newspaper, particularly when the very most basic provision of the Bill of Rights is that Congress shall make no law abridging freedom of speech or of the press.

Now, if Congress can make no law abridging freedom of speech and of the press, how does it happen that publishing a newspaper can come to be part of a conspiracy for which one may be subject to prosecution with possible 5 years imprisonment and a $10,000 fine?

Also charged in the indictment is Charles Fujimoto, who has announced that he is chairman of the Communist

Party in the Territory of Hawaii, and who has issued press statements as chairman of the Communist Party.

Charles Fujimoto grew upon the island of Kauai. He did not feel that the democratic rights he learned about in school were being given to his fellow citizens. He was fortunate enough to be able to go to college, and the more he learned, the more he became convinced that the great guarantees of freedom that existed on paper, were not put into practice in Hawaii. And so, according to his own conclusion of what would help the working people, he announced to the world that he advocated socialism as better for workers than capitalism.

Now, there is nothing in the United States Constitution that says capitalism and democracy are the same.

Since 1848, when the Communist Manifesto was published by Karl Marx, there have been advocates in the United States of the doctrine known as Marxism, but not until the present government campaign and the cases of the eleven Communist leaders in New York, and the other 63 persons now charged, has the government deemed it necessary to suppress dissenters; that is, people who do not think capitalism is the answer for the people of the United States.

And so it comes about that Charles Fujimoto, who grew up on the island of Kauai, whose opinions and beliefs come from observing the plantation system at work in the Territory, and capitalism at work in the Territory, achieves the great prominence of being selected as "one of the 63 most dangerous" persons in the United States. He is labelled "dangerous" because of his ideas. He is prosecuted for those ideas.

All of you know of John Reinecke. For 20 years, he and his wife were faithful public servants—teachers in the

public schools. Then Governor Stainback chose him and his wife for the first whipping-boys in the red smear campaign. Our law offices represented John and Aiko in their hearing. The Attorney General of Hawaii was forced to admit he had no evidence of any kind to attack either of the Reineckes as teachers. They had to admit that they were fine and outstanding teachers; that whatever their beliefs were, they had tried to teach their students how to think, not what to think. The crime of the Reineckes was their walking on picket lines, and their constant association and help to workers.

Eileen Fujimoto—the wife of Charles Fujimoto—is known to many of you. She, too, was born in Hawaii. For eight years she has been a faithful and efficient secretary to the ILWU. She is prosecuted, among other reasons, because she associates with her husband and is accused of sharing his ideas. Can this be a crime in the United States? I think not, in the kind of America you and I want.

James Freeman is a worker like all of you. Even the chairman of the UnAmerican Committee had to agree that he served his country well during World War II as a member of the Seabees at the Philippines front. All his life, he has been either a worker or a labor organizer of agricultural workers and of construction workers.

There is not one of these seven defendants who did not grow up in, and is not the product of America. Four were born and have always lived in Hawaii. What they learned, they learned in American schools; they learned by observing in the United States. Their ideas were based upon what they saw and felt.

Can we not, in the United States, disagree with a person and yet defend his right to have ideas in conflict with ours? Must we all think alike and accept as gospel

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what we are told, or else be labelled "subversive"? That is not my idea of Americanism.

Several weeks ago, a story came out in the newspapers that the ink on the Declaration of Independence and the ink on the Constitution of the United States, including the Bill of Rights, was fading. A great concern was expressed because this ink was fading, and these documents were embalmed in chemicals so that the ink would not fade further.

The danger in the United States today is not that the ink on the Declaration of Independence is fading, or the ink on the Constitution and Bill of Rights is fading. The danger is that officials of government are destroying the substance of these documents.

Subversive?

In several places throughout the country, recently, newspaper reporters have tried an experiment. They have made up a petition containing parts of the Bill of Rights and parts of the Declaration of Independence. The common ordinary citizens who were asked to sign these petitions refused to do so. Some of them labelled the circulators of the petitions "Communist." Some of them said they were afraid to sign for fear they would lose their jobs.

When we get to the place in the United States of America where our people are afraid to sign the basic documents of our liberty for fear that the government will punish them for doing so, we have already lost our liberty and now we must put up the fight to get it back.

The Declaration of Independence, adopted in Congress July 2 and signed July 4, 1776, says:

"We hold these truths to be self-evident: that all men are created equal; that they are endowed by their

Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness."

How can the prosecution of individuals on a charge of advocating and teaching socialism be squared with the Declaration of Independence, and the right to freedom of speech and of conscience?

At the time when the Congress of the United States adopted the Declaration of Independence, they too were

IN THE

Supreme Court of the United States

October Term, 1958

No. 326

In the Matter of Disciplinary Proceedings against HARRIET BOUSLOG SAWYER, a Member of the Territorial Bar of the Territory of Hawaii,

Petitioner.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

REPLY BRIEF OF PETITIONER.

Preliminary.

1. On the effect of the judgment suspending petitioner for one year, respondent attempts to distinguish such a suspension from disbarment by saying that reapplication "would be as a matter of right after the expiration of the period of suspension." (R. B., 2.)[1] According to Rule 15(d) of the Territorial Court (O. B., App., 84),[2] petitioner's only "right" upon completion of the suspension will be to take "an examination as though applying for admission to the Bar." Thus, after eighteen years of service at the Bar, with a distinguished record unblemished except for the charges involved here, petitioner will

[1]Respondent's Brief will be referred to as "R. B."

[2]Petitioner's opening brief will be referred to as "O. B."

branded "criminals." Our forefathers thought it basic to our country that thenceforth this right be guaranteed to all Americans. Thus, with this in mind, the people of the United States insisted on a bill of rights—a bill of rights which guarantees freedom of speech, freedom of thought, freedom of assembly, freedom of the press, freedom of religion, the right of persons to be safe and secure in their houses and papers, the right to a fair hearing and a fair trial—all of these rights which we are taught in school are basic to America.

Yet the government itself has overthrown these rights and refused to make them apply to persons whose ideas are unacceptable to them.

The Supreme Court of the United States has already upheld the conviction of 11 leaders of the Communist Party in New York. Two justices only dissented from that decision. Those two, Justice Douglas and Justice Black, said in clear and certain language that the United States government was doing more to undermine and overthrow the form of government we have in the United States under the Constitution, than the defendants before the court.

Even Judge Metzger!

This attack by agents of government against all who disagree with their policies is not limited to the seven defendants. The name of Judge Delbert E. Metzger is known to all of us. Judge Metzger has been a member of the legislature, a circuit court judge, and a federal judge. He has been an engineer and a private lawyer. He has been in Hawaii since 1898.

He alone among all the public officials in Hawaii, tried to preserve the Constiution of the United States during the period of martial law. He alone was not intimidated

have the same "right" as the young law student who has just received his degree.

2. Concerning the genesis of the charges against petitioner, respondent observes that "petitioner compliments herself too much in stating that the amendment of the rules[3] which are applicable to all members of the Bar was 'devised' for her own and personal detriment." Back in 1954, apparently, the president of respondent association saw things differently. At petitioner's hearing he testified that the Association's Committee on Legal Ethics had recommended a complaint be filed but under the then existing rules of the Territorial Court, the Bar Association could not be a complainant. ". . . consequently [his testimony continues] the matter was again referred to the Committee on Legal Ethics to study amendments to the rules of the Supreme Court, and the Chairman of the Committee on Legal Ethics took the matter up with the Chief Justice. And as I recall, the amendment to Rule 19 —that is, the rule on complaints for unprofessional conduct—I think was amended in April, 1954. Thereafter, the Chairman of the Committee on Legal Ethics submitted a proposed draft of the complaint . . . and then finally, the form of the complaint was, as filed, agreed upon, and I . . . was authorized to file that complaint in the name of the Bar Association." [R., 536, 537.] One is reminded of the hero of one of Lincoln's stories who, as he was being ridden out of town on a rail, observed that if it wasn't for the honor of it, he would just as soon walk.

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[3]Rule 19 of the Territorial Court. (O. B., App. 77-83); compare especially paragraph 1, page 77 with paragraph 1, page 80.

by threats of physical violence against him and his family, and issued a writ of habeas corpus to release a person charged and convicted by the drumhead military courts and the United States Supreme Courts upheld him in that decision.

Now, because he dared to fix a bail that he felt adequate to serve its purpose, namely, to guarantee the appearance of the defendants, he has been castigated by Congressmen, statements have issued from the White House, saying that he will not be reappointed, and all manner of personal attacks have been made against him.

No stronger proof could be shown than in this attack upon Judge Metzger that persons like the seven defendants are only the first in the Territory of Hawaii, and among the first in the nation, who are charged as criminals for disagreeing with the policies of the government.

If this campaign of the government to silence all opposition succeeds first among persons labelled "Communist," it will then move to militant trade union leaders, judges and others.

Do not feel safe because your name is not among the seven, because if this conspiracy of government against the seven succeeds, you and your children will have lost your liberties, and we will go again into dark ages of thought-control—thought-control against which we fought in Germany, in Japan, in Italy, and to which our government has now turned to maintain itself in power.

What can you do? What can you, as individuals, do to stop the destruction of your liberties?

The first and foremost thing you can do is to strengthen your trade union so that all of you can speak with one mighty voice, to protest, to give aid and assistance, and to demand that American freedoms guaranteed by the

POINT ONE.

The Court Below Had Appellate Jurisdiction Under 28 U. S. C. 1293 on the Two Independent Grounds That This Is a Case (a) "Involving the Constitution . . . of the United States" and (b) Wherein the "Value in Controversy Exceeds $5,000.00."

(a) This is a case "involving the Constitution . . . of the United States."

Petitioner has been deprived of her license to practice law in the Territorial Courts in a manner tantamount to disbarment. She asserts, as she did below, that this action contravenes the due process clause of the Fifth Amendment and the free speech guarantee of the First Amendment. Each of these claims raises a substantial federal question conferring appellate jurisdiction on the court below under 28 U. S. C. 1293. That statute has uniformly been held to confer appellate jurisdiction over claims that local statutes or action taken thereunder offend the Federal Constitution. *Prensa Insular v. Puerto Rico,* 1 Cir., 189 F. 2d 1019, 1020 (asserted abridgement of free press by operation of local statute on criminal libel); *Mercado Riera v. Mercado Riera,* 1 Cir., 152 F. 2d 86, 92 (action of territorial court claimed to offend Fifth Amendment in deprivation of equal protection and due process); *Romero v. Puerto Rico,* 1 Cir., 182 F. 2d 864, 867 (claim that local statute suffered from Fifth Amendment vagueness); *Colon-Rosich v. Puerto Rico* (claim of arbitrary inferences offensive to due process clause of Fifth Amendment).

Contrary to respondent's position (R. B., 25-30) the existence of a federal question does not turn on whether the professional license is a privilege or immunity belonging to federal citizenship or derived from national author-

ity. Patently petitioner's license was granted by the Territorial Court pursuant to Territorial law. (See Rev. Laws of Hawaii, 9701, O. B., 5.) The federal question arises from the manner in which that license was suspended. The cases make clear that whatever the source of the professional license and however clear the jurisdiction of the disciplining body over the subject matter, it may not act in violation of the Federal Constitution. When it does so, that action creates the federal question. No local authority which "acts under law is beyond the reach of the Constitution." *Board of Education v. Barnette,* 319 U. S. 624, 638.[4]

Whether a privilege or a right, the professional license is "liberty" and "property" in the constitutional sense. *Ex parte Garland,* 71 U. S. 333, 378-379; *In re Summers,* 325 U. S. 561, 566-569. It cannot be taken away or denied for reasons which offend either due process of law or freedom of speech. *Schware v. Board of Bar Examiners,* 353 U. S. 232, 238, 239; *Konigsberg v. State Bar,* 353

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[4]Respondent devotes nearly nine pages of its brief answering what it fancies to be petitioner's "contention that due process of law was not accorded her, in contravention of the First [*sic*] and Fifth Amendments to the Constitution of the United States." (R. B., 27-35.) Apparently respondent conceives that petitioner's claim to be that she was denied procedural due process. Petitioner has never contended in this litigation that she was denied fair notice and opportunity to be heard. Her claim of denial of due process of law (O. B., Point One, pp. 30-50) is confined to an assertion of arbitrary fact finding. She has never in this litigation raised any other due process point, and respondent's dreary recital of the procedural steps before the Territorial Court and its Legal Ethics Committee, as well as that in the opinion of the Territorial Court [R., 95-115], is quite irrelevant to any position urged by petitioner.

Constitution and the Bill of Rights be preserved for all of us.

But if you cannot get your friend, your neighbor, to join, you must still lift up your voice even if it is a voice in the wilderness, if you are to save your liberty and the liberty of your children and your fellow man.

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